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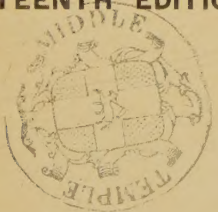

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ADDENDA ET ERRATA.

Page 54.—After *Re Oliver's Settlement*, add, *Re Thursby's Settlement*, [1910] 2 Ch. 181.

Page 67.—After *Bowles* v. *Baker*, add, *Skipper and Tucker* v. *Holloway and Howard*, [1910] 2 K. B. 630; and *Forster* v. *Baker*, *ib.* 636.

Page 134, note (*d*).—*Re Sansom and Narbeth's Contract* is now reported [1910] 1 Ch. 741; see also *Re Sparrow and James' Contract*, [1910] 2 Ch. 60.

Page 237, line 14.—*For* 104, *read* 71.

Page 242, note.—After *Fearnside* v. *Flint*, add, "Cf. *Shaw* v. *Crompton*, [1910] 2 K. B. 370 as to a rentcharge."

Page 247, note.—Having regard to *Re Stockton Iron Furnace Co.*, 10 Ch. D. 335, cited at p. 330, it may be better to add at the end of the attornment clause: "Provided also that neither the receipt of the said rent nor the tenancy created by the said attornment shall render the mortgagee liable to account as mortgagee in possession." The rent should in no case exceed the interest, and may conveniently be a nominal sum.

Page 400.—The decision in *Willmott* v. *London Road Car Co., Ltd.*, has now been reversed by the Court of Appeal; see W. N. (1910) p. 209.

Page 462, note (*a*).—Add at the end, "As to the stamp on a partition deed, see p. 466, *infra*, n. (*a*)."

Observations

ON

THE REAL PROPERTY ACT, 1845 (*a*).

It is a merit in this Act that it contains no definitions extending the meaning of words beyond their ordinary acceptation. Such definitions are useful when they shorten an Act, and simplify its expressions; but they have been introduced in many Acts not longer than this, which they obviously lengthen and embarrass, instead of shortening and simplifying. They are also frequently misapplied, by declaring that one word shall mean exactly what another already means, as that "land" shall mean what "hereditaments" means (*b*).

In the Act now before us, "tenements and hereditaments" are used in their common and well-known sense, *viz.*, that of all property which can be holden or is inheritable. The word "tenements" is, however, superfluous, for every tenement is necessarily a hereditament (*c*).

Repeal of the Act to simplify the Transfer of Property, 7 & 8 Vict. c. 76.

Section 1.—This section repealed *ab initio* the 8th section of the Act to simplify the Transfer of Property, and the remainder of the same Act from the 1st of

(*a*) See the Act (8 & 9 Vict. c. 106), *infra*, Appendix I.

(*b*) By the 13 & 14 Vict. c. 21, s. 4, "land" in an Act of Parliament was made to include all hereditaments of every tenure. This Act has been repealed by the Interpretation Act, 1889 (52 & 53 Vict. c. 63), which, however, re-enacts in substance all the provisions of the repealed Act.

(*c*) Co. Litt. 6 a; 2 Bl. Comm. 17.

October, 1845 (*a*). It has itself been repealed by the Statute Law Revision Act, 1875, but such repeal has not apparently the effect of restoring the repealed section of the Act to simplify the Transfer of Property.

Ancient distinction between estates lying in livery and in grant.

Section 2.—According to the well-known rule of law, the immediate freehold of all corporeal hereditaments lay in livery, that is to say, passed at common law by feoffment, with livery of seisin or corporeal tradition, to which, from very early times, a deed or charter of feoffment was added as evidence of the feoffment. In modern practice, the deed of feoffment became the principal instrument of the conveyance, and the livery of seisin a ceremony needful to perfect it. Reversions and remainders in corporeal hereditaments, and all incorporeal hereditaments (*b*), whether in possession or reversion, have always lain in grant, *i.e.*, have passed by the delivery of the deed of conveyance or grant without any further ceremony, except that, as to seigniories and reversions and remainders of corporeal hereditaments, the attornment of the tenant was necessary till abolished by the stat. 4 & 5 Anne, c. 16.

Conveyance by lease and release.

The great inconvenience of the livery of seisin required to perfect a feoffment, and the difficulty in many cases of giving it properly (4 Cru. Dig. by White, p. 74), introduced various other modes, founded on the Statute of Uses, of conveying the immediate freehold of corporeal hereditaments, all of which, except one, were very limited, and generally inconvenient in their application. The exception was the conveyance by lease and release, which long since became, and till 1841 continued to be, the ordinary mode of conveying the immediate freehold of corporeal here-

(*a*) The Act was in operation only from 1st of January to 1st of October, 1845, and the observations upon it which were contained in all editions preceding the thirteenth, are considered to be now of no practical value or interest, and are therefore omitted.

(*b*) The reversion or remainder of a corporeal hereditament is in truth an incorporeal hereditament, but the distinction in the text is useful for the present purpose.

ditaments, and was, from abundant caution, also generally used for the conveyance of reversions and remainders, and even of equitable estates in corporeal hereditaments. This mode of conveyance was, in 1841, almost completely superseded in England by a conveyance founded on the Act of the 4 & 5 Vict. c. 21, called "An Act for rendering a Release as effectual for the Conveyance of Freehold Estates as a Lease and Release by the same Parties" (*a*), and which substituted a reference to the Act, coupled with the imposition of an extra stamp, for a lease for a year (*b*). It having, however, been considered that a corporation could not stand seised to a use, it followed that a corporation could not convey by a common lease and release, because the lease was in fact a bargain and sale for a year operating under the Statute of Uses; and the above Act being so worded as merely to imply the execution of the lease for a year, and not the actual entry, which was required to make good the lease, if made by a corporation, corporations continued to convey by feoffment with livery of seisin after the Act, as they did before. In Ireland, the recital in a release of a lease for a year was made full evidence thereof by the Irish statute, 9 Geo. 2, c. 5, s. 6 (*c*): and, after that time, the actual execution of a lease for a year of Irish land was dispensed with (*d*).

Conveyance under the statute 4 & 5 Vict. c. 21.

Irish lease for a year, Act 9 G. 2, c. 5.

The present Act put an end to the necessity of using any of the above modes of conveyance, either in England

Conveyances under the present Act.

(*a*) Repealed by the Statute Law Revision Act, 1874 (No. 2).

(*b*) The imposition of this extra stamp was repealed by the Act 13 & 14 Vict. c. 97, s. 6.

(*c*) This section, the Act having been originally temporary, was made perpetual by the Irish statute, 1 Geo. 3, c. 3, but the whole Act has now been repealed by the Statute Law Revision (Ireland) Act, 1878.

(*d*) By the statute 5 & 6 Vict. c. 82, continued by the 8 & 9 Vict. c. 2, and by the 11 & 12 Vict. c. 9, an Irish release reciting a lease for a year was subjected to stamp duty (except progressive duty), payable for the lease for a year, as in England; but this stamp duty was repealed by the 13 & 14 Vict. c. 97, s. 4.

or Ireland, by enacting that all corporeal tenements and hereditaments should, as regarded the immediate freehold thereof, be deemed to lie in grant as well as in livery; that is to say, should pass by the delivery of the deed of conveyance, as incorporeal hereditaments and the reversions and remainders of corporeal hereditaments theretofore had passed. (*Copestake* v. *Hoper*, [1908] 2 Ch. 10.)

This enactment has admirably met the desideratum of enabling corporeal hereditaments in possession to be conveyed by a single deed; for it introduces no new form of conveyance, but simply renders the estates hitherto conveyed by lease and release, or feoffment with livery, capable of being conveyed by "grant"; a mode of assurance as old as the law itself, and the nature and properties of which are perfectly well known and settled. At the same time, the effect which the word "grant" has been sometimes supposed to have, of implying a covenant in law, is taken away by the 4th section, so that there can be no objection to any person conveying by that word; and, from its convenience and propriety, it became the operative word usually employed in conveyances of real estate, though, of course, any word expressive of the intention to pass the estate is effectual (*a*).

Ancient modes of conveyance may still be used.

The present Act does not abolish any of the ancient modes of conveyance, but only extends the power of con-

(*a*) *E.g.*, the word "convey" used in the Conveyancing and Law of Property Act, 1881, Appendix IV., *infra*, but not (see sect. 2 (v.)) as a necessary substitute for the word "grant." See also sect. 49, to the effect that the use of the word is not necessary.

Stamp duty.

By the Act itself every deed which was to operate as a grant by force only of this enactment was required to be stamped with an additional stamp of the same amount as the first or only stamp which the lease for a year would have borne, and which, in all cases except conveyances upon sales and mortgages for less than 150*l.*, was 1*l.* 15*s.*; but the imposition of the progressive stamp duty, which the lease for a year would have borne, was expressly negatived, and the imposition of the lease-for-a-year stamp in this and all other cases was repealed by the Act 13 & 14 Vict. c. 97, s. 6.

veying by grant to the immediate freehold of corporeal hereditaments; it is, therefore, still open to convey by lease and release, or by feoffment with livery of seisin, or by bargain and sale inrolled. But the superior convenience of conveying by grant has in practice thrown all other modes of conveyance out of use.

Customary freeholds.

The present Act does not interfere with customary freeholds, and such freeholds continue to be conveyed by the customary mode of conveyance. See 1 Cru. Dig. by White, tit. x. ch. 1, sects. 9 *et seq.*, p. 255.

Feoffments.

Section 3.—A feoffment might, until the Statute of Frauds, have been made in most cases by word, without any writing (Shep. Touchst. 203); and did not, up to the passing of the present Act, require a deed. The present Act provides that a feoffment, made after the 1st day of October, 1845 (other than a feoffment made under a custom by an infant), shall be void *at law*, unless evidenced by deed. It does not seem necessary that the feoffment should be accompanied contemporaneously by a deed; it will be sufficient for the feoffment to be at any time afterwards evidenced by a deed made by the parties competent. The enactment is of no practical importance, as a feoffment not evidenced by deed was quite unknown in modern practice, and feoffments are now altogether disused. The exception as to a feoffment under a custom by an infant, refers to the custom of Kent, which allows an infant who has attained fifteen to alien his gavelkind lands by feoffment with personal livery of seisin, and was made in order not to touch in any way gavelkind customs (*a*).

Partition.

At common law, coparceners might have made partition of things lying either in livery or grant by parol without deed; and tenants in common might have made partition of things lying in livery by parol without deed if they perfected the partition by livery of seisin. (Litt. sect.

(*a*) See Davidson's Prec. Conv. vol. ii. 4th ed. p. 244, n. (*a*); *Re Maskell and Goldfinch's Contract*, [1895] 2 Ch. 525.

250; Co. Litt. 169 a.) Also joint-tenants for years (but not joint-tenants of freeholds) might have made partition by parol without deed. (Co. Litt. 187 a, 169 a.) After the Statute of Frauds, however, a writing was in all cases necessary; but a deed was required only in cases in which it was necessary before the statute, although it was sometimes asserted (2 Bl. Comm. 324; 4 Cru. Dig. by White, 77) by mistake, that the statute had rendered a deed in all cases necessary.

Exchange.

At common law, an exchange of things lying in grant could be made only by deed; but an exchange of corporeal hereditaments lying in the same county could be made by parol perfected by entry. (Litt. sects. 62–66.) If the lands, however, to be exchanged lay in two counties, the exchange could only be by deed indented. (Litt. sect. 63; Co. Litt. 50 a, 51 b.) After the Statute of Frauds, all exchanges were required to be in writing; and a deed was necessary only where it was necessary before the statute.

By the present Act, every partition and exchange made after the 1st day of October, 1845, of hereditaments (not being copyhold) is void *at law*, unless made by deed. The enactment was very proper as a means of preventing the disputes which might arise on irregular and informal partitions and exchanges, but did not affect the practice of conveyancers, as no partition or exchange was ever made in recent times without a deed or a statutory order of the General Inclosure Commissioners now merged in the Board of Agriculture and Fisheries.

Leases.

A lease for years is defined to be a contract between lessor and lessee for the possession and profits of lands or other hereditaments on the one side, and for a recompense by rent or other income on the other (Bac. Abr. art. "Leases"); and hence the rule, that any words which indicate that one party is to give and the other to take possession, *primâ facie* constitute a lease. The Statute of Frauds merely required all leases, except leases for a

term not exceeding three years from date, and at not less than two-thirds of the rack-rent, to be in writing; and, therefore, on an agreement for a lease, the question frequently arose, whether the instrument operated as an actual demise, or merely as an agreement to demise. The present Act, by requiring that all leases required by law to be in writing shall, after the 1st of October, 1845, be by deed, closed up this abundant source of litigation, and greatly lightens the task of the conveyancer in preparing agreements for leases; for if the instrument be not under seal, it cannot operate otherwise than as an agreement for a lease, whatever form or language be employed.

In the case of *Stratton* v. *Pettit*, 16 C. B. 420, the Judges seem erroneously to have supposed, that an instrument void as a lease under the Act was not good as an agreement, overlooking the fact that the avoidance of the instrument is by the Act expressly confined to an avoidance "*at law*"; but in the more recent cases of *Bond* v. *Rosling*, 1 Best & Sm. 371, and *Rollason* v. *Leon*, 7 H. & N. 73, an agreement, although admitted to be void under the statute as a lease, was held to be valid as an agreement to take a lease; and by the case of *Tidey* v. *Mollett*, 16 C. B. N. S. 298 (see too *Stranks* v. *St. John*, L. R. 2 C. P. 376, and *Hand* v. *Hall*, 2 Ex. D. 355), the decision in *Stratton* v. *Pettit* was expressly overruled. The correctness of the opinion expressed in the fifth edition of this work, that an instrument such as that in the case of *Stratton* v. *Pettit*, though void at law as an agreement, would be enforceable in equity, is established by the case of *Parker* v. *Taswell*, 27 L. J. Ch. 812, affirmed on appeal, 2 De Gex & Jo. 559. See further on this subject the Introduction to Davidson's Prec. Conv. vol. v. 3rd ed. pp. 14—18, and cases there cited. But since the passing of the Judicature Act, the subject has ceased to be of much importance, as a person holding under an executory agreement for a lease of which specific performance would be granted must now be treated in the

High Court (*a*) as holding on the terms of the agreement. (*Walsh* v. *Lonsdale,* 21 Ch. D. 9; *Re Maughan, Ex parte Monkhouse,* 14 Q. B. D. 956; *Allhusen* v. *Brooking,* 26 Ch. D. 559; *Swain* v. *Ayres,* 20 Q. B. D. 585; 21 Q. B. D. 289; *Lowther* v. *Heaver,* 41 Ch. D. 248; *Foster* v. *Reeves,* [1892] 2 Q. B. 255; *Manchester Brewery Company* v. *Coombs,* [1901] 2 Ch. 608; *Rickett* v. *Green,* [1910] 1 K. B. 253.)

The Act, in this instance, embraces hereditaments of every tenure, but affects only leases required by law to be in writing, *i.e.*, leases for more than three years, or at less than two-thirds of the rack-rent. See, as to the latter class of leases, *Wood* v. *Beard,* 2 Ex. D. 30.

Assignments.

Previously to the Statute of Frauds, an assignment might have been by parol only, but that statute required that all assignments of leases, or terms of years, should be by deed or note in writing duly signed. (See *Hodges* v. *Drakeford,* 1 Bos. & Pul. N. R. 270.) The present Act provides that every assignment made after the 1st of October, 1845, of a chattel interest (not being copyhold) in any hereditaments, shall be void at law, unless made by deed: the enactment, it will be seen, does not except common law chattel interests in copyholds, such as leases of copyholds made under a licence to demise. This provision, though proper, for the same reasons as above mentioned with respect to partitions and exchanges, made no change in the practice of conveyancers, as assignments had long been invariably made by deed.

Surrenders.

At common law, a surrender of corporeal hereditaments might have been made by parol without deed or livery; but a surrender of incorporeal hereditaments could only have been by deed. The Statute of Frauds required that every surrender should be made by deed or note in

(*a*) It may be otherwise in a Court not having concurrent jurisdiction at law and in equity, as a County Court. See *Foster* v. *Reeves,* [1892] 2 Q. B. 255; and also *Zimbler* v. *Abrahams,* [1903] 1 K. B. 577.

writing signed by the party so surrendering, or his agent. (4 Cru. Dig. by White, 85.) The present Act requires, that every surrender in writing made after the 1st of October, 1845, of an interest in any hereditament, not being a copyhold interest, and not being an interest which might by law have been created without writing, shall be void at law unless made by deed.

The Act does not apply to surrenders by operation of law, and, so far as relates to a *release* or surrender, does not extend to Ireland (*a*). By the Landlord and Tenant Law Amendment Act (Ireland), 1860 (23 & 24 Vict. c. cliv. s. 104: see also the Statute Law Revision Act, 1875), this section is repealed so far as the same relates to the relation of landlord and tenant in Ireland, save so far as the same relates to feoffments, partitions and exchanges.

Feoffments not to have a tortious operation.

SECTION 4.—A feoffment perfected by livery of seisin was termed a tortious conveyance, and had the effect of passing a fee, if it purported so to do, notwithstanding the feoffor had a less estate or interest in the property, or no estate at all but possession. It also had the effect of destroying contingent remainders and powers appendant, and of creating a forfeiture. Conveyances by grant, bargain and sale, lease and release, or covenant to stand seised, were termed innocent assurances, and had no effect except to pass the estate of the conveying party. Beyond this they were simply void, neither passing a greater estate, nor creating a forfeiture. (See Sanders on Uses, 5th ed. pp. 12 *et seq.*) By the operation of the present statute, a feoffment has now no other effect than an innocent assurance.

Exchange and partition not to imply a condition in law.

The word "exchange" created a general warranty and right of re-entry, which rendered titles under exchanges extremely inconvenient and embarrassing. This incon-

(*a*) The proviso as to Ireland was introduced in the House of Commons without reference to the authors of the Bill; the word "release" is evidently a mistake for "lease."

venience was got over in modern practice by means of mutual conveyances; but as the above-mentioned operation of the word "exchange" has been abolished both by the Transfer Act and the present Act, a proper exchange may now be resorted to. With regard to the effect of the word "exchange," see Shep. Touch. 291; 4 Cru. Dig. by White, p. 74.

Every partition also implied a special warranty in law (Shep. Touch. 185; Co. Litt. 384 a); in modern practice this was always prevented by the insertion of the usual covenants for title, and the abolition of the general warranty is practically unimportant.

"Give" or "grant" not to imply a covenant in law.

The word "give" in a feoffment made a warranty when an estate of frank tenement or inheritance passed by the deed, and was also made by statute an express warranty during the life of the feoffor. (Shep. Touch. 184; Co. Litt. 384 a, and n. (1).) The word "grant" implied a general covenant for quiet enjoyment or general warranty in a lease for years, or an assignment of such a lease, but not otherwise. (Co. Litt. and note *ubi supra*: Davidson's Prec. Conv. vol. i. 4th ed. 74, 108; *Baber* v. *Harris*, 9 Ad. & Ell. 532; *Hinde* v. *Gray*, 1 M. & Cr. 195; *Granger* v. *Collins*, 6 Mee. & W. 458; *Lesenbury* v. *Evans*, 3 M. & Gr. 210; *Williams* v. *Burrell*, 1 C. B. 402.) The present Act declares that neither "give" nor "grant" in a deed executed after the 1st of October, 1845, shall imply any covenant in law in respect of any hereditament, except by force of any Act of Parliament. The exception in the statute probably refers to the provisions in Railway and other Acts of that nature, in which it is provided, that the word "grant" in conveyances to and by the company shall imply all the usual covenants for title (*a*);

(*a*) *E.g.*, the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 132. A similar statutory effect was given by the former Yorkshire Registry Acts to the words "grant, bargain and sell," in deeds of bargain and sale inrolled under those Acts. See 6 Anne, c. 35, ss. 30, 34, and 8 Geo. 2, c. 6, s. 35. But these Acts

but as the exception does not extend to a warranty, it does not keep on foot the warranty annexed by statute to the word "give" as above mentioned. "Give," however, is altogether disused as a word of conveyance.

Demise.

The word "demise" (or, as appears from the observations of Parke, B., in *Hart* v. *Windsor*, 12 M. & W. 68, 85, which have been, in effect, affirmed by *Jones* v. *Lavington*, cited below, the word "let" or any other equivalent word, in a lease for years, implies a covenant for quiet enjoyment, and perhaps also for the lessor's title to demise (see the references above as to "grant"; and *Line* v. *Stephenson*, 5 Bing. N. C. 183; *Hall* v. *City of London Brewery Company*, 2 Best & S. 737; *Penfold* v. *Abbott*, 32 L. J. Q. B. 67; *Mostyn* v. *West Mostyn Coal and Iron Company*, 1 C. P. D. 145); and this implication extends apparently to an agreement for a lease (*Stranks* v. *St. John*, L. R. 2 C. P. 376; *Bandy* v. *Cartwright*, 8 Exch. 913; *Robinson* v. *Kilvert*, 41 Ch. D. 88), and is not taken away by the present Act. Even in the absence of any word of demise, a covenant for quiet enjoyment is to be implied from the relationship of landlord and tenant. (*Budd-Scott* v. *Daniell*, [1902] 2 K. B. 351.) But it is doubtful whether, under any circumstances, such a covenant not limited to the acts of the lessor and those claiming under him can be implied either from the use of the word "demise," or "let," or otherwise. (*Jones* v. *Lavington*, [1903] 1 K. B. 253; *Markham* v. *Paget*, [1908] 1 Ch. 697.)

It should be observed that implied covenants are in all cases superseded, when express covenants are inserted: see Davidson's Prec. Conv. vol. i. 4th ed. 107; 5th ed. 86; and authorities there cited, and *Leonard* v. *Taylor*, Irish Rep. 7 C. L. 207; 8 C. L. 300.

were repealed by the Yorkshire Registries Act, 1884 (47 & 48 Vict. c. 54, amended by 48 Vict. c. 4), and the new Act contains no similar provision as to covenants. See also the Yorkshire Registries Amendment Act, 1885 (48 & 49 Vict. c. 26).

Distinction between indenture and deed-poll.

Section 5.—The well-known distinction between a deed-poll and an indenture is, that a deed-poll is by one party only, and has its edge polled or even, while an indenture is between two or more parties, and has its edge indented, the indented edge being the symbol of a duplicate, or supposed duplicate, in the custody of another party. The actual indenting, however, has long been disregarded, and, in modern practice, the deed-poll and indenture have been distinguished in form only by their words of commencement and conclusion, and the commencement of their operative parts. (Co. Litt. 143 b, 229 a; 2 Black. Comm. 295; 4 Cru. Dig. by White, 8; Burton's Real Property, 140, 140 n., 439; Davidson's Prec. Conv. vol. i. 4th ed. p. 31; 5th ed. p. 22.)

A practical distinction, however, between an indenture and a deed-poll was, that no person could take an immediate estate or benefit under an indenture, unless he were named as a party to it; but any person could take an immediate estate or benefit under a deed-poll, inasmuch as it is addressed to all the world. (Co. Litt. 26 a, 231 a; Burton's Real Property, 442, 442 n.; 2 Prest. Conv. 394 *et seq.*) It has been questioned, whether a person not *in esse* at the time of the execution of a deed-poll can take an immediate benefit under it. But see *Kelsey* v. *Dodd*, 52 L. J. Ch. 34, 39.

Another practical distinction between a deed-poll and an indenture was, that a covenant entered into by a deed-poll with any covenantee named in the deed was valid; but a covenant in an indenture entered into with a person not a party could not be sued on by that person. (*Green* v. *Horne*, Salk. 197; *Berkeley* v. *Hardy*, 5 B. & C. 355, and *Isaacs* v. *Green*, L. R. 2 Ex. 355, and cases cited therein: see, too, Davidson's Prec. Conv. vol. i. 4th ed. p. 32; 5th ed. p. 23.) An action, however, might be maintained by a party to an indenture against one who was not a party, but had executed the deed. (*Salter*

v. *Kidgley*, Carth. 76. See further. 2 Prest. Conv. 394 *et seq.*)

These distinctions are abolished by this section of the present Act so far only as relates to *hereditaments;* and under an indenture executed after the 1st October, 1845, an immediate estate or interest in any hereditaments, and the benefit of a covenant or of a condition respecting any hereditaments, may be taken by a person not a party. See *Dyson* v. *Forster*, [1909] A. C. 98.

The enactment at the end of the section, that a deed executed after 1st October, 1845, and purporting to be an indenture, need not be actually indented, merely expresses what had been long understood to be law.

Conveyance of contingent and executory interests.

SECTION 6.—Before the statute 3 & 4 Will. 4, c. 74 (the Act for the Abolition of Fines and Recoveries), a contingent interest in real estate could be conveyed by fine (*Doe* v. *Oliver*, 10 B. & C. 181); but, after that statute, contingent interests in real estate in England could not be conveyed at law, but merely in equity, as a matter of contract: the Irish Act for the Abolition of Fines and Recoveries, 4 & 5 Will. 4, c. 92, authorised the conveyance of contingent interests in hereditaments in Ireland. The present Act gives a complete power to dispose of all contingent and future interests in hereditaments of any tenure (*Jenkins* v. *Jones*, 9 Q. B. D. 128; *Allcock* v. *Moorhouse*, *ib.* 366; *Kennedy* v. *Lyell*, 15 Q. B. D. 491; *Pemberton* v. *Barnes*, [1899] 1 Ch. 544), except that as to rights of entry the enactment is confined to England (*a*). A person taking a conveyance under this

(*a*) This section, as it came from the framers, applied to England only; but in Parliament the words "in England" were struck out in the first branch, and the reference to the Irish Recovery Act added. The words "in England" in the second branch were, it is supposed, left in through inadvertence. The addition of the reference to the Irish Recovery Act introduces an apparent ambiguity in sect. 7, as to which of the Recovery Acts is intended, though all real question is obviated by the context.

enactment stands precisely in the place of the person from whom he takes, and becomes entitled in possession or absolutely, if the grantor would have become so entitled, but not otherwise. With respect to copyholds, no surrender will be necessary in the case of a disposition under the Act; but the person to whom the conveyance is made will, on its falling into possession, be entitled to admittance in the place of the person originally entitled.

Section 7.—This clause precludes a question which had been made, whether a married woman could disclaim by force of the Act for the Abolition of Fines and Recoveries, 3 & 4 Will. 4, c. 74. The enactment is confined to England alone; but the Irish Act, 4 & 5 Will. 4, c. 92, s. 68, expressly authorises a disclaimer by a married woman (*a*).

Contingent remainders.

Section 8.—It will be observed, that only such of the contingent remainders created before the passing of the Act are protected as had been existing since the 31st of December, 1844, that is, only such of the contingent remainders created before the passing of the Act as had not failed, or been destroyed, before the 31st of December, 1844, and could not by means of the 8th section of the Transfer Act, have failed, or been destroyed, after that day by the destruction or merger of the preceding estate. The practical benefit to conveyancing of this section was the same as that which was derived from the corresponding section of the Transfer Act, viz., the omission (which soon became usual) of the limitations to trustees to preserve contingent remainders.

It should be borne in mind that no alteration has been made in the rule, that a contingent remainder cannot be limited without a particular estate of freehold to support it; nor, except in cases coming within 40 & 41 Vict. c. 33, *infra*, Appendix III., in the rule, that the remainder will

(*a*) See the preceding note.

fail if the particular estate determine by effluxion of time, or by some event on which it was, in its creation, limited to determine, before the remainder becomes vested. See 1 Jarm. on Wills, 5th ed. 225; and *Cunliffe* v. *Brancker*, 3 Ch. D. 393; *Astley* v. *Micklethwaite*, 15 Ch. D. 59 (which exemplifies the distinction where the estates are equitable); *Re Freme*, [1891] 3 Ch. 167 (where an equitable contingent remainder was held not to have been affected by becoming clothed with the legal estate); *Symes* v. *Symes*, [1896] 1 Ch. 272 (where a legal remainder limited to the members of a class who should fulfil a specified condition, was regarded as vesting in those who fulfilled the condition at the time of the determination of the particular estate to the exclusion of those who did not); and *White* v. *Summers*, [1908] 2 Ch. 256 (where the question whether and in what circumstances a devise is to be construed as a contingent remainder or an executory devise is discussed with reference to the preceding cases of *Lechmere* v. *Lloyd*, *Miles* v. *Jarvis*, *Dean* v. *Dean*, and *Re Wrightson*).

The effect of the Act, 40 & 41 Vict. c. 33, *infra*, Appendix III., is to make any contingent remainder, created by an instrument executed after the passing of the Act, 2nd of August, 1877, or by a will or codicil revived or republished after that date, "which would have been valid as a springing or shifting use, or executory devise or other limitation, had it not had a sufficient estate to support it as a contingent remainder," capable of taking effect notwithstanding the termination of the particular estate before the remainder vests. It would seem that any limitation which, under the rule against perpetuities, would be valid as a contingent remainder, but invalid as a springing use or executory devise (see 1 Jarm. on Wills, 5th ed. pp. 220 *et seq.*, and Sugden's Law of Property, pp. 116—121), is excepted from the operation of this Act, and may consequently still be valid if created by way of contingent remainder.

Section 9.—The object of this section is to do away with the rule, that the covenants of, and remedies against, a lessee, and the obligations on the lessor, being incident to the immediate reversion, cease as regards the land on the surrender or merger of that reversion. (*Webb* v. *Russell*, 3 T. R. 393; *Wootley* v. *Gregory*, 2 You. & J. 536; *Burton* v. *Barclay*, 7 Bing. 745; *Thorn* v. *Woolcombe*, 3 B. & Ad. 586.) The rule was altogether technical, was productive of injustice when it did operate, and occasioned a good deal of expense and trouble in preventing its operation when foreseen. The present enactment, however, does not remedy the similar evil which arises when the immediate reversion is extinguished otherwise than by surrender or merger. This is a case which may happen when a lease has been granted by the trustee of a term, which is afterwards extinguished, either by virtue of a proviso for cesser contained in the instrument creating it, or of the Satisfied Terms Act (8 & 9 Vict. c. 112); or where a lease, out of which under-leases have been granted, has, on a purchase of the fee by the lessee, been assigned to attend the inheritance. It may, however, be maintained, perhaps, that in these cases there is no extinguishment, on the ground that neither a proviso for cesser, nor the Act referred to, will extinguish a term or lease, so long as there are rents and covenants legally incident thereto, inasmuch as the trusts of the term are not fully performed, nor has the term or lease become a satisfied term, so long as such rents and covenants are incident thereto; and, as regards leases made after the 31st of December, 1881, any question of the kind seems to be precluded by sects. 10 and 11 of the Conveyancing and Law of Property Act, 1881, Appendix IV., *infra*. Of course, the section under consideration has no application where the reversion is destroyed by re-entry on a forfeiture (*Great Western Railway Company* v. *Smith*, 2 Ch. D. 235; on appeal, 3 App. Cas. 165). And as to the rights of a sub-lessee under such circumstances, see sect. 14

of the last-mentioned Act, and the Conveyancing and Law of Property Act, 1892, Appendix VI., *infra*, sect. 4.

A lease disclaimed by the trustee in bankruptcy of the lessee, under sect. 23 of the Bankruptcy Act, 1869, is by virtue of that section to "be deemed to have been surrendered" (*a*); and it might therefore seem that such disclaimer ought, in regard to the interests of the original lessor and any under-lessee, to be treated as equivalent to an actual surrender of the lease. It has, however, been decided that such a disclaimer does not affect the rights of the lessor under the original lease, as against the under-lessee (*Ex parte Walton, In re Levy*, 17 Ch. D. 746 (*b*)), and the relations in such case between the original lessor and the under-lessee must therefore be considered as of an anomalous character not affected by this section of the Act under consideration.

This section of the Act is retrospective in its operation (per Williams, J., in *Upton* v. *Townend*, 17 C. B. 30, see p. 50).

(*a*) The disclaimer "puts an end, not merely to the term, but to the lease itself"; per Jessel, M. R., *Ex parte Dyke*, 22 Ch. D. 410, at p. 425. The Bankruptcy Act, 1883, s. 55, which corresponds generally with sect. 23 of the Act of 1869, does not purport to give to a disclaimer of a lease the effect of a surrender. See further as to such disclaimers the note to Prec. XXXIV., *infra*.

(*b*) *Smalley* v. *Hardinge*, referred to in that case, is reported on appeal, 7 Q. B. D. 524. It has also been decided that such a disclaimer by the trustee of an assignee of the lessee does not affect the rights and liabilities of the lessor and the original lessee: *Harding* v. *Preece*, 9 Q. B. D. 281; *East & West India Dock Co.* v. *Hill*, 22 Ch. D. 14; 9 App Cas. 448.

Observations

ON THE

CONVEYANCING AND LAW OF PROPERTY ACT, 1881 (*a*).

A Bill identical in the main with this Act, together with another Bill entitled "The Settled Land Act, 1880," was introduced by Lord Cairns in the spring of 1880. Both fell through, in consequence of the dissolution of Parliament later in the year by the ministry of which Lord Cairns was a member, and though introduced in the first session of the new Parliament, and passed in the Upper House during that session, did not make any progress in the House of Commons. Both were again introduced by Lord Cairns early in the year 1881. The former became law, somewhat to the surprise of the Profession, on the 22nd of August, 1881 (*b*), and has since been supplemented by the Conveyancing Act, 1882 (*c*) (consisting mainly of clauses struck out of the original Bill in committee), and the Conveyancing and Law of Property Act, 1892 (*d*). The latter having been re-introduced at the same time as the Conveyancing Act, 1882, under the short title of "The Settled Land Act, 1882," and having undergone some modification in com-

(*a*) 44 & 45 Vict. c. 41, Appendix IV., *infra*.

(*b*) The Solicitors' Remuneration Act, 1881, became law on the same day.

(*c*) 45 & 46 Vict. c. 39, Appendix V., *infra*.

(*d*) 55 & 56 Vict. c. 13, Appendix VI., *infra*.

mittee, is also now law (*a*); and has been supplemented by the Settled Land Act, 1884 (*b*), the Settled Land Acts (Amendment) Act, 1887 (*c*), and the Settled Land Acts, 1889 and 1890 (*d*).

I.—Preliminary.

Short title; commencement; extent.

Section 1.—Note, as regards sub-sect. 2, that although the Act commences on the 1st of January, 1882, many of its provisions are retrospective, in the sense of being applicable after that date to instruments executed or acts done before that date (the extent of the application of each section being generally specified in a sub-section), and that in considering any section, particular attention must be paid to its limitations in point of extent.

Interpretation of property, land, &c.

Section 2.—Few of the subsequent sections can be properly understood without reference to the interpretations in this section of the various words used in the Act, and in the following observations it is assumed that each section will be read with reference to the interpretation clause.

With reference to sub-sect. v. it should be observed that questions have arisen upon clauses for the like purpose contained in other Acts. Thus in *Green* v. *Paterson*, 32 Ch. D. 95, it was held that a mere declaration of trust is not a disposition within sect. 40 of the Fines and Recoveries Act, 1833; in *Carter* v. *Carter*, [1896] 1 Ch. 62, that such a declaration is, or may be,

(*a*) 45 & 46 Vict. c. 38, Appendix VII., *infra*.
(*b*) 47 & 48 Vict. c. 18, Appendix VIII., *infra*.
(*c*) 50 & 51 Vict. c. 30, Appendix IX., *infra*.
(*d*) 52 & 53 Vict. c. 36, Appendix X., *infra*; and 53 & 54 Vict. c. 69, Appendix XI., *infra*.

a disposition within sect. 77 of the same Act; in *Rodger* v. *Harrison*, [1893] 1 Q. B. 161, that an agreement for the sale of land is not an assurance capable of registration within the meaning of the Yorkshire Registries Act, 1884; in *Re Hughes*, [1893] 1 Q. B. 595, that a conveyance of a debtor's property, except leaseholds, to trustees for the benefit of his creditors generally, accompanied by a declaration of trust of the leaseholds, was an act of bankruptcy within sect. 4, sub-sect. 1 (a) of the Bankruptcy Act, 1883; in *Re Gaskell and Walters' Cont.*, [1906] 2 Ch. 1, that a disentailing assurance is not an "alienation" within sect. 8 of the Forfeiture Act, 1870; and in *Shrager* v. *March*, [1908] A. C. 402, that a declaration of trust by a settlor is effectual to "pass" the property under sect. 47 of the Bankruptcy Act, 1883.

With respect to sub-sect. vi., it has been held that a lien created by articles of association upon the shares of each member for his debts to the company constitutes a charge upon the shares within the meaning of this sub-section (*Everitt* v. *Automatic Weighing Machine Co.*, [1892] 3 Ch. 506).

An equitable, no less than a legal mortgagee, is of course a purchaser within sub-sect. viii. (*Lloyds Bank, Ltd.* v. *Bullock*, [1896] 2 Ch. 192).

II.—Sales and other Transactions.

Contracts for sale.

Section 3.—The first sub-section remedies a defect in the Vendor and Purchaser Act, 1874, Appendix II., *infra*, by sect. 2, rule 1, of which purchasers of leaseholds under an open contract were precluded from calling for the freehold title, but the purchaser of an under-lease was left at liberty to call for the title to the superior lease. See also sect. 13 of the present Act, and the observations *infra* on that section, and also sect. 4 of the Conveyancing Act,

1882, Appendix V., *infra*, providing that a contract for a lease shall not form part of the title to the lease.

The second sub-section seems unfortunately worded, as it cannot be ascertained whether copyhold or customary land has been converted into freehold by enfranchisement, unless the title to make the enfranchisement has been investigated ; as, however, a strict construction of this sub-section would render it wholly inoperative, the reference to an actual conversion of such land into freehold may probably be safely considered as meaning an apparent or presumptive conversion (*a*).

Notwithstanding these sub-sections a purchaser under an open contract will, it seems, be entitled to insist on objections in respect of the title for which he is precluded from calling, if he shall discover their existence from information obtained from other sources (see Dart, V. & P. 7th ed. pp. 163 to 165 (*b*)).

As regards the other sub-sections, it seems desirable to point out, that any assumption which the purchaser is bound to make under them is altogether displaced (as it ought to be), in case the contrary appears.

As to sub-sect. 3, it has been held that, upon the sale of

(*a*) The title prior to the enfranchisement could not, even before the Act, have been called for when the enfranchisement was made under the Copyhold Act, 1852: *Kerr* v. *Pawson*, 25 Beav. 394; Dart. V. & P. 7th ed. pp. 183 and 326. This Act has been repealed by the Copyhold Act, 1894 (57 & 58 Vict. c. 46), the sections chiefly relied on in *Kerr* v. *Pawson* being substantially re-enacted (sects. 21 and 61).

(*b*) See also *Clarke* v. *Mitchell*, L. T. Newspaper, vol. lxxxvi. p. 408 (where a purchaser was held entitled to insist on an objection that mines and minerals appeared by recitals to have been reserved); *Jones* v. *Watts*, 43 Ch. D. 574; *Re Cox & Neve's Contract*, [1891] 2 Ch. 109; and compare *Re National Provincial Bank of England and Marsh*, [1895] 1 Ch. 190, where a purchaser was held to be bound by a condition that the prior title should not be required, investigated, or objected to; and *Re Scott and Alvarez's Contract*, [1895] 1 Ch. 596; 2 Ch. 603.

an old term, mesne assignments made more than forty years before the sale need not be abstracted (*Williams* v. *Spargo*, W. N. 1893, 100).

The fourth sub-section has been held not to apply to a building lease for a long term at a pepper-corn rent for the first three years, so as to make the production of a receipt for the pepper-corn sufficient evidence of the payment of the rent and performance of the covenants (*Re Moody and Yates' Contract*, 28 Ch. D. 661; affirmed 30 Ch. D. 344). And of course a receipt by the original lessor or ground-landlord for the ground-rent is not such a receipt as is referred to in the fifth sub-section (*Re Higgins and Percival*, W. N. 1888, 172; 57 L. J. Ch. 807; 59 L. T. 213). Neither sub-section makes the receipt conclusive evidence, or has any application where it appears that the covenants have not been performed (*Re Highett and Bird's Contract*, [1902] 2 Ch. 214; affirmed, [1903] 1 Ch. 287).

Under the sixth sub-section the purchaser need not bear the expense of abstracting a deed not in the vendor's possession, of which the purchaser requires an abstract, if such deed forms part of the forty years' title which the vendor is bound to deduce, and the purchaser can compel its production (*Re Johnson and Tustin*, 30 Ch. D. 42), or of abstracting in chief documents forming part of the title, although fully recited in a subsequent instrument (*Re Stamford, &c. Co. and Knight's Contract*, [1900] 1 Ch. 287), or of procuring a document forming part of the title, such as a certificate required by the lease of a house that it has been completed in accordance with the covenants (*Re Moody and Yates' Contract*, 30 Ch. D. 344); but he must bear the expense of producing and inspecting deeds in the possession of the vendor's mortgagee (*Re Willett and Argenti*, W. N. 1889, 66; 60 L. T. 735); and of searching for documents not in the vendor's possession, and required by the purchaser for verifying the abstract (*Re Stuart and Olivant and Seadon's Con-*

tract, [1896] 2 Ch. 328). On the other hand, the expense of obtaining deeds required by the purchaser to be handed over on completion falls upon the vendor, for the sub-section relates only to expenses of production and inspection (*Re Duthy and Jesson's Contract*, [1898] 1 Ch. 419).

The stipulation imported by sub-sect. 7 into contracts for the sale of property in lots had become common, but was not invariably inserted, because no purchaser of several lots, not purchasing with a view to sub-sales, would be likely to require more than one abstract of the common title, and a purchaser of several lots intending to sub-sell, might fairly expect to receive as many abstracts as lots.

An opinion has been expressed by well-known commentators on the Act (*a*) that, having regard to the alterations in the law effected by this section, and the Vendor and Purchaser Act, 1874, a vendor having such a title as is usually accepted by a willing purchaser, may now enter into an open contract for sale, without fear of being put to undue expense in answering requisitions, or furnishing evidence; and, in this opinion, the writers of these observations concur. The forms in use at the passing of the Act appear, however, to be somewhat more favourable to the vendor, though perhaps less equitable.

The section applies only to titles and purchasers on sales properly so called (sub-sect. 8, and see sect. 2, sub-sect. viii.).

Completion of contract after death.

Section 4. It will not be safe to take a conveyance from the personal representatives of a deceased vendor under this section, unless the contract is clearly enforceable against the heir or devisee, and whether it is so can only be conclusively ascertained, as a general rule, by an action for specific performance (*Re Colling*, 32 Ch. D. 333; *Re Thomas*, 34 Ch. D. 166; but see *Re Pagani*, [1892] 1 Ch. 236). But the section can hardly have

(*a*) The late Mr. Wolstenholme and his colleagues.

been intended to operate only in cases in which judgment for specific performance of the contract has been obtained, as in such cases the heir or devisee could be declared a trustee, and a vesting order can be made (Trustee Act, 1893, s. 31). Moreover, such cases are met by the provisions of sect. 30. It should be noticed that the power given by the section now under consideration to the personal representatives of a deceased vendor, renders it practically unnecessary to consider, in cases within the section, whether the legal estate in property contracted to be sold by him, has passed by a general devise in his will (as to which, see *Lysaght* v. *Edwards*, 2 Ch. D. 499), for an exercise of the power by his legal personal representatives will defeat the estate of any devisee. The qualification in sub-sect. 2 makes caution necessary in acting upon this section. But its provisions appear to be superseded for the future by the Land Transfer Act, 1897, Part I., Appendix XVIII., *infra*, which provides that real estate vested in any person, without a right in any other person to take by survivorship, shall on his death devolve to his personal representatives.

Discharge of incumbrances on sales.

Section 5.—The provisions of this section enabling incumbrances to be discharged by payment into Court, extend not only to sales by the Court, but also to private sales, and extend to sales not completed before the 1st of January, 1882, as well as to sales made after 31st December, 1881. But the Court has a discretion to refuse the application, and will do so if to grant it would inflict hardship, as where a purchaser asks that the vendor may be compelled to pay into Court for the purpose of discharging an incumbrance a sum exceeding the purchase-money (*Re Great Northern Rail. Co. and Sanderson*, 25 Ch. D. 788); and upon a sale out of Court it is not clear that the Court has jurisdiction to direct payment into Court for such a purpose by any person other than the applicant. Upon a proper application the Court will

decide questions of construction involving interests *in futuro* (*Re Freme's Contract,* [1895] 2 Ch. 256; on appeal, *ib.* 778).

Read with the aid of the definition of "incumbrance" in sect. 2, the section may afford means of getting rid of chief and quit-rents, charity annuities, and the like, as well as incumbrances properly so called. But see sect. 45.

As to the form which an order under this section should take, see *Dickin* v. *Dickin,* W. N. 1882, 113; 30 W. R. 887; and *Patching* v. *Bull,* 30 W. R. 244. See also *Milford Haven Rail. and Estate Co.* v. *Mowatt,* 28 Ch. D. 402. In *Archdale* v. *Anderson,* 21 L. R. Ir. 527, an order under this section was made where the land was charged with the payment of legacies.

General words.

Section 6.—In the earlier editions of this work the general words had been greatly abridged by omitting for the most part the enumeration of particulars; and a desire was expressed that the legislature would enable conveyancers to do away with them altogether, by enacting, in the language of the general words themselves, that all the things they specify, and all other rights, easements, and appurtenances, whether strictly appurtenant, or appurtenant only by reputation and enjoyment, should pass by the conveyance of the property itself. It was also pointed out that until this was done, the general words in a modified shape must be retained, as, although there never was any question but that what is strictly appurtenant to land would pass by the conveyance of it, those rights and easements which are not strictly appurtenant at law, but are only appurtenant by reputation and enjoyment, could not safely be left out of consideration (*a*). As to such rights and easements, see *Kay* v.

(*a*) In an Act introduced by Lord Brougham (8 & 9 Vict. c. 119), repealed by sect. 71 of the present Act, there is a clause (sect. 2) intended to supersede general words in conveyances under that

Oxley, L. R. 10 Q. B. 360; and also (among other later cases) *Broomfield* v. *Williams*, [1897] 1 Ch. 602; *Re Hughes and Ashley's Contract*, [1900] 1 Ch. 595; *Quicke* v. *Chapman*, [1903] 1 Ch. 659; *International Tea Stores Co.* v. *Hobbs*, [1903] 2 Ch. 165; *Cable* v. *Bryant*, [1908] 1 Ch. 259. And cf. *Milner's Safe Co., Ltd.* v. *G. Northern and City Rail. Co.*, [1907] 1 Ch. 208; *May* v. *Belleville*, [1908] 2 Ch. 605.

The present section meets the desire so expressed by in effect enacting that rights, easements, and appurtenances appurtenant to land by reputation or enjoyment only, shall pass by a conveyance of the land in the same manner as rights, easements, and appurtenances legally appurtenant to such land, and renders the use of general words unnecessary. Of course it does not affect the rights of persons not parties to the conveyance (*Beddington* v. *Atlee*, 35 Ch. D. 317; *Birmingham, &c. Banking Co.* v. *Ross*, 38 Ch. D. 295; *Broomfield* v. *Williams, ubi supra*).

The statutory general words do not (except as regards manors) expressly include mines and minerals. But the omission is of no importance, as they, being part of the inheritance, must pass with the land unless expressly reserved or excepted, though in some cases (*e.g.*, that of a lease not containing any such reservation) the right to work them may be in abeyance. Mines and minerals have of late years commonly (though by no means invariably) been expressly mentioned amongst the general words hitherto in use, and the omission to mention them in a conveyance of land in a mining district was understood to imply that they had been reserved on some previous dealing with the property (see *Halliday* v. *Dennison*, 4 Jur. (N. S.) 1002; 5 W. R. 357). But

Act, but the provision did not meet the real defect as to things reputed to be, but not actually, appurtenant, and, being confined to conveyances in pursuance of that Act, was never of any general use.

except for the purpose of negativing such an implication, they were wholly unnecessary; and in conveyances of land in purely agricultural districts, were frequently—perhaps generally—omitted. In conveyances of land in mineral districts it is still not unusual to mention them, for the purpose of precluding the implication above referred to, but if they are mentioned alone it may be desirable to exclude any application of the rule *expressio unius est exclusio alterius* (see *Beddington* v. *Atlee*, 35 Ch. D. 317). However, the section applies if and so far as a contrary intention is not *expressed* in the conveyance (sub-sect. 4).

It should also be noticed that the statutory general words do not extend, like those hitherto in use, to rights and easements enjoyed with or known as appurtenant to the property *at any time previously* to the conveyance. In this respect, the statutory general words seem the more correct, as the property is intended to be dealt with in its actual condition, at the time of the conveyance; and, in fact, it may be doubted whether the reference to earlier reputed rights and easements ever had any value (see *Roe* v. *Siddons*, 22 Q. B. D. 224). The statutory words seem sufficient to meet such circumstances as those which existed in *Kay* v. *Oxley* and the similar cases above referred to.

Regard being had to this section, it will generally be improper to mention appurtenances in a contract for sale of land, for the effect of so doing might be to invite a discussion upon the nature and extent of the general words to which a purchaser was entitled before the Act. On that point see *Bolton* v. *Bolton*, 11 Ch. D. 968; and *Re a Contract between Peck and the School Board for London*, [1893] 2 Ch. 315; both of which, however, were determined under special circumstances.

Covenants for title.

Section 7.—This section has, except in very special cases, altogether abrogated covenants for title, and against

incumbrances, except in voluntary conveyances, to which the section does not extend, and in which as a rule covenants for title would not be inserted. Covenants for title (except the covenant for further assurance) have seldom been of any practical utility; and by sect. 66 a solicitor who obtains for his client the benefit of the implied statutory covenants, will be discharged from the liability which he would otherwise have incurred for not inserting in the deeds similar express covenants. But it must be borne in mind that *the appropriate statutory covenants or covenant will only be implied where the conveyance is expressed to be made by the conveying party or parties in one or other of the characters mentioned in sub-sect.* 4; and that, in any case in which a conveying party is not expressed to convey in any such character, the covenant, or covenants, which ought to have been entered into by him in a conveyance before the Act, must be inserted.

Sub-sect. 1 F. (2) is evidently intended to meet the case of trustees conveying by the direction of the tenant for life, who, in such cases, usually covenants for title, with a proviso limiting his covenants to his own estate, but it may be useful in other cases as well.

When a wife conveys and is expressed to convey as beneficial owner, and the husband also conveys and is expressed to convey as beneficial owner, covenants for title will be implied on the part of the wife, and on the part of the husband, and a further covenant for title will be implied on the part of the husband, in the same terms as the covenant on the part of the wife (sub-sect. 1 F. (3)). The object of thus implying three separate sets of covenants for title in this case does not at first sight seem very clear. But it was probably connected with the necessity of extending the husband's covenants to the acts of the wife and her predecessors in title (*a*).

(*a*) See, as to the effect of the wife's covenants, the observations on sect. 59, *infra*.

A covenant by the purchaser to pay the rent and perform the covenants is still required in assignments on sales of leaseholds, and a covenant by the lessor for quiet enjoyment is still required in leases (see sub-sect. 5); and apparently, in dealings with copyhold or customary property, a covenant to surrender or other deed forming part of the conveyance of the property is necessary, wherever covenants for title of any kind ought to be entered into by the surrenderor or other person dealing with the property.

And it should be noticed that the implied covenants may be varied or extended by deed (sub-sect. 7), and of course other covenants may be inserted in the conveyance in their stead. Express covenants will no doubt operate by way of variation of the implied statutory covenants, but no question as to the effect of express covenants in this respect can arise where the covenantor is not expressed to convey in any of the characters mentioned in sub-sect. 4 (*a*).

The implied covenant against incumbrances extends only to incumbrances on the land, and does not extend to claims against the owner of the land personally as owner (*Egg* v. *Blayney*, 21 Q. B. D. 107; and compare *Stock* v. *Meakin*, [1900] 1 Ch. 683). See also *David* v. *Sabin*, [1893] 1 Ch. 523, in which it was held that sub-leases made by a lessee from whom the lessor afterwards took a surrender, were incumbrances made by "a person rightfully claiming under the" lessor within this section, and the meaning of the word "omitted" in this section was considered. In *Page* v. *Midland Rail. Co.*, [1894] 1 Ch. 11, it was decided that defects of title appearing on the face of a conveyance or otherwise known to the purchaser, are not to be excluded from the operation of the covenants

(*a*) In the following collection of precedents, covenants for title and against incumbrances are entirely omitted. Where the insertion of such covenants is for any reason desired, the implied statutory covenants will afford material for framing them.

for title, and the decision would seem to be applicable to implied as well as to express covenants (*May* v. *Platt*, [1900] 1 Ch. 616; *Great Western Rail. Co.* v. *Fisher*, [1905] 1 Ch. 316). As to the measure of damages for breach of covenants for title, see *Turner* v. *Moon*, [1901] 2 Ch. 825, and *Great Western Rail. Co.* v. *Fisher, ubi supra*. Usual implied covenants are entered into, it may be added, upon a sale by a lunatic (*Re Ray*, [1896] 1 Ch. 468).

Under the Land Transfer Acts, 1875 and 1897, a vendor of land registered with an absolute title cannot be required to enter into any covenant for title; and the implied covenants under this section of a vendor of land registered with a possessory or qualified title are modified to the effect mentioned in sect. 16 (3) of the Land Transfer Act, 1897.

Execution of purchase deed.

Section 8.—It has been laid down that a purchaser may as a general rule insist on having the conveyance executed in his own presence, or attested by a witness of his own selection (*Viney* v. *Chaplin*, 4 Drew. 237; 2 De G. & J. 468; Dart, V. & P., 7th ed. p. 682; see also *Ex parte Swinbanks*, 11 Ch. D. 525; and compare *Essex* v. *Daniell*, L. R. 10 C. P. 538). The present section defines the purchaser's rights in this respect.

The provisions of the section are applied by sect. 9 of the Land Transfer Act, 1897, to transfers of registered land.

Acknowledgment of right to production and undertaking for safe custody of documents.

Section 9.—An acknowledgment under this section of the right to production and delivery of copies of documents, is substituted for the usual covenant by fiduciary owners to the like effect (*Re Agg-Gardner*, 25 Ch. D. 600); and a similar acknowledgment, coupled with an undertaking for the safe custody of the documents, is substituted for the covenant for similar purposes

hitherto given by an absolute owner. As to what is a "document," see *Rex* v. *Daye*, [1908] 2 K. B. 333.

Trustees and mortgagees cannot (the present writers think) be expected to give the undertaking referred to in this section; but, as regards a tenant for life, it would seem to be otherwise, for he is the beneficial owner, and bound to covenant for title.

Difficulty sometimes arises under this section, when the deeds in question are in the possession of third parties, who will not, and cannot be compelled to, give an acknowledgment or undertaking with respect to them. In such a case an acknowledgment or undertaking given by a party not having possession of the deeds would not operate under the statute, and it is conceived that a covenant in the old form should be given. But a title depending upon deeds, the production of which is secured in this way, cannot be deemed satisfactory.

Upon an enfranchisement the copyholder is not, it seems, entitled to any acknowledgment or undertaking as to the muniments of title to the manor (*Re Agg-Gardner, ubi supra*); but an acknowledgment, or acknowledgment and undertaking, as the case may be, is commonly given as to such muniments, and as to the Court Rolls either generally, or so far as they relate to the enfranchised hereditaments.

Where, as in the case of a mortgagor retaining any of the title deeds to the mortgaged property, and giving an acknowledgment, production ought to be at the expense of the covenantor, this will have to be expressly mentioned (see sub-sect. 5).

It seems worth noticing that the section does not expressly give to the person entitled to the benefit of an acknowledgment the right to take copies of documents produced under it; and it would appear that, inasmuch as the section imposes on the person giving the acknowledgment an obligation to deliver copies, there is no right to take copies (*Mutter* v. *Eastern and Midlands Rail. Co.*,

38 Ch. D. 92; *Re Balaghat Gold Mining Co., Ltd.*, [1901] 2 K. B. 665, overruling *Boord* v. *African Consolidated Land and Trading Co.*, [1898] 1 Ch. 596. See also *Ormerod, Grierson & Co.* v. *St. George's Ironworks, Ltd.*, [1905]1 Ch. 505; *Norey* v. *Keep*, [1909] 1 Ch. 561; *Davies* v. *Gas Light and Coke Co.*, *ib.* 248, 708).

III.—Leases.

Rent and benefit of lessee's covenants to run with the reversion.

Section 10.—At common law no assignee of the reversion expectant upon a lease could take advantage of any condition for re-entry, though it is said that he might sue and distrain for rent reserved on the lease, and sue for breaches of covenants in law. The statute of 32 Hen. 8, c. 34, enacted (sect. 1) that all grantees of reversions should enjoy all the advantages, benefits, and remedies by entry for non-payment of rent, or for doing of waste, or other forfeiture, or by action only for non-performance of conditions, covenants, or agreements contained or expressed in leases which the grantors or lessors themselves enjoyed. This enactment does not extend to leases not under seal (*Manchester Brewery Co.* v. *Coombs*, [1901] 2 Ch. 608), and was held not to extend to covenants not running with the land (*i.e.*, not touching and concerning the land, as to which, see the note to *Spencer's Case*, in Smith's L. C.), or to an assignee of the reversion in a part only of the land (Co. Litt. 215 a, and see *Hyde* v. *Warden*, 3 Ex. D. 72). The present section does not (it is assumed) extend the rights of an assignee of the reversion as regards covenants not running with the land, between which covenants and covenants not relating to the subject-matter of the lease there seems to be no difference. It attempts, however, to annex the benefit of covenants which do run with the land to the beneficial ownership, whether accompanied by the legal ownership

or not. And it clearly confers upon a mortgagee, whose mortgagor has granted a lease under sect. 18, the right to enforce the covenants and conditions of that lease. See *Municipal Permanent Society* v. *Smith*, 22 Q. B. D. 70. So, too, a mortgagor whilst in possession may by virtue of the section sue in his own name in respect of breaches. See *Turner* v. *Welsh*, [1909] 2 K. B. 484. Moreover, the rights of an assignee of the reversion in a part only of the land appear to be greatly extended by the section, read with sect. 12, which together give to him, in effect, the same rights as if the lease had originally comprised only the part assigned to him. By 22 & 23 Vict. c. 35, s. 3, such an assignee became entitled, where the rent had been legally apportioned, to the benefit of all conditions of re-entry for non-payment of the original rent, in the same manner as if they had been reserved to him as incident to his part of the reversion, in respect of his apportioned part of the rent. But this enactment, it will be observed, only operated where the rent had been legally apportioned, and as regards conditions of re-entry for non-payment of such rent. The present section (which, however, applies only to leases made on or after the 1st January, 1882) extends to all covenants and provisions by the lessee having reference to the subject-matter of the lease, whether the rent is apportioned or not. It has hitherto been the rule that an apportionment of rent is not binding on the tenant, unless made by the verdict of a jury, or with his consent (see *Walter* v. *Maunde*, 1 J. & W. 181; *Bliss* v. *Collins*, 5 B. & Ald. 876; *Mayor of Swansea* v. *Thomas*, 10 Q. B. D. 48; and also *Baynton* v. *Morgan*, 21 Q. B. D. 101; 22 Q. B. D. 74), and it can hardly have been intended to alter this rule.

Obligation of lessor's covenants to run with the reversion.

Section 11.—The second section of the statute 32 Hen. 8, c. 34, gave to lessees similar rights against assignees of the entire reversion. But the remarks previously made as to sect. 10 of the present Act apply to

Apportionment of conditions on severance, &c.

this section of the Act, and also to SECTION 12. Sect. 11 does not apparently alter in any way the old law as to the class of covenants the burden of which will run with the reversion. See *Davis* v. *Town Properties, &c., Ltd.*, [1903] 1 Ch. 797.

On sub-demise title to leasehold reversion not to be required.

SECTION 13.—In this section the words "to be derived out of a leasehold interest with a leasehold reversion," must mean *to be derived out of an under-lease or sub-lease;* since the reversion referred to, for the title to which the intended under-lessee is not to call, cannot be that expectant upon the under-lease to be granted under the contract, because such a reversion would not exist until the intended under-lease was actually granted. It follows that, under such a contract by a lessee holding directly from the freeholder, the intended under-lessee will be entitled to call for the title to the lease; and that, under such a contract by an under-lessee, the intended under-lessee will be entitled to call for the title to the under-lease out of which the intended term is to be granted, but not for the title to the superior lease or under-lease. See *Gosling* v. *Woolf*, [1893] 1 Q. B. 39, in which this view was adopted with respect to both the present section and sect. 3, sub-sect. 1. As a rule, the restriction imposed by the section on the rights of the intended under-lessee will be sufficient, as the title to the lease or under-lease out of which the term is to be granted will be in the intended under-lessor's power, and capable of being produced. But it may sometimes be desirable to preclude the intended under-lessee from calling for the title to grant the under-lease.

See also the Vendor and Purchaser Act, 1874, s. 2, sub-s. 1 (Appendix II., *infra*), and sect. 3 of the present Act.

Restrictions on and relief against forfeiture of leases.

SECTION 14.—Hitherto relief had been given by the Court against forfeiture incurred through non-payment of rent (as to which see 15 & 16 Vict. c. 76, s. 212, and the Common Law Procedure Act, 1860, 23 & 24 Vict. c. 126, s. 1; *Hare* v. *Elms*, [1893] 1 Q. B. 604; *Howard* v. *Fanshawe*, [1895] 2 Ch. 581; *Humphreys* v. *Morten*, [1905] 1 Ch. 739; *Moore* v. *Smee*, [1907] 2 K. B. 8); and (under 22 & 23 Vict. c. 35, ss. 4 to 9, and the Common Law Procedure Act, 1860, s. 2) against forfeiture incurred through omission to insure, but not in any other cases of forfeiture, unless under special circumstances, as where by unavoidable accident, by surprise, or ignorance not wilful, parties have been prevented from executing a covenant literally (see per Lord Alvanley, M.R., in *Eaton* v. *Lyon*, 3 Ves. 693, and the note to *Peachey* v. *Duke of Somerset*, 2 White & Tudor, L. C.; also *Barrow* v. *Isaacs & Son*, [1891] 1 Q. B. 417; *Matthews* v. *Smallwood*, [1910] 1 Ch. 777).

The sections above referred to of 22 & 23 Vict. c. 35, and also the second section of the Common Law Procedure Act, 1860, are repealed by sub-sect. 7 of the present section of the Act under consideration; and relief against forfeiture for non-insurance will be given in future under this section, which is more favourable to lessees than the repealed enactments, and extends to all other forfeitures not mentioned in sub-sect. 6, except forfeitures for non-payment of rent (the law and statutes relating to which are left untouched, sub-sect. 8: see, however, as regards under-leases, sect. 4 of the Act of 1892, and *Gray* v. *Bonsall*, [1904] 1 K. B. 601), and to all breaches committed before or after the passing of the Act. See *Quilter* v. *Mapleson*, 9 Q. B. D. 672. It applies, moreover, to an agreement for a lease, where there is a title to specific performance, or to have the lease granted. See *Swain* v. *Ayres*, 21 Q. B. D. 289; *Strong* v. *Stringer*, 61 L. T. 470; *Ayling* v. *Mercer*, W. N. 1885, 166; and also

sect. 5 of the Conveyancing and Law of Property Act, 1892, Appendix VI., *infra*.

It may be proper in some cases to fix a sum as liquidated damages for breach of each material covenant, and as regards continuing breaches, for each day, week, or month during which the breach continues. Also it may be proper, where the lease contains a covenant or condition against assignment, underletting, parting with the possession, or disposing of the land leased, to exclude so much of sub-sect. 6 (i.) as relates to such covenants and conditions. See *Gentle* v. *Faulkner*, [1900] 2 K. B. 267. If the covenant or condition be against disposing of the land without the landlord's consent, and it be added, as it frequently is on the lessee's behalf, that such consent is not to be arbitrarily or unreasonably withheld, the effect of the covenant or condition must (as in *Treloar* v. *Bigge*, L. R. 9 Exch. 151; *Hyde* v. *Warden*, 3 Ex. D. 72; *Sear* v. *House Property Society*, 16 Ch. D. 387; and *Bates* v. *Donaldson*, [1896] 2 Q. B. 241) be decided ultimately by the Court; and trouble and friction might perhaps be saved by dispensing with the addition, and extending the section as suggested. Sect. 3 of the Conveyancing and Law of Property Act, 1892, Appendix VI., *infra*, provides that no fine is to be exacted for a licence to assign, and sect. 4 enables relief to be given under the present section, although the forfeiture was occasioned by breach of a covenant not to assign (*Imray* v. *Oakshette*, [1897] 2 Q. B. 218, where the conditions on which relief ought to be granted are considered; *Matthews* v. *Smallwood*, [1910] 1 Ch. 777). As to what is a fine, see *Re Cosh's Contract*, [1897] 1 Ch. 9; *Waite* v. *Jennings*, [1906] 2 K. B. 11; *Jenkins* v. *Price*, [1907] 2 Ch. 229. It should be observed that sect. 3 of the Act of 1892 does not make the demand or payment of a fine illegal (*Andrew* v. *Bridgman*, [1908] 1 K. B. 596). If a licence to assign is refused except on payment of a fine, the lessee may assign without consent (*S. C.*).

In sub-sect. 3, fee-farm rent is obviously used in its popular sense of "grant in consideration of a rent-charge in fee." In strict technical correctness, a fee-farm rent is a perpetual rent reserved on a conveyance of lands in fee simple, and cannot, since the statute *Quia Emptores* (18 Edw. 1, c. 1), be reserved except by the Crown, because the grantor parting with the fee is, by the operation of the statute, without any reversion, and without a reversion there cannot be rent-service (Cruise's Digest, 4th ed. vol. iii. p. 274).

Sub-sect. 6 has been amended by the Conveyancing and Law of Property Act, 1892, Appendix VI., *infra*, sect. 2, sub-sects. 2 and 3.

As to the 8th sub-section, see *Ex parte Gould*, 13 Q. B. D. 454; as to the service of notices, see sect. 67; and as to the meaning of bankruptcy, sect. 2 (xv.), and of mining lease, sect. 2 (xi.).

In giving a notice under this section, the terms and requirements of the section should be strictly followed. See *North London Land Co.* v. *Jacques*, 49 L. T. 659; 32 W. R. 283; *Jacques* v. *Harrison*, 12 Q. B. D. 136, 165: *Greenfield* v. *Hanson*, 2 Times L. R. 876; *Horsey Estate, Ltd.* v. *Steiger*, [1899] 2 Q. B. 79. And the particular breach or breaches must be specified in detail (*Fletcher* v. *Nokes*, [1897] 1 Ch. 271; *Re Serle*, [1898] 1 Ch. 652: see also *Penton* v. *Barnett*, [1898] 1 Q. B. 276, where a notice to repair had expired, but the breach was continuing; and *Jacob* v. *Down*, [1901] 2 Ch. 156). But it is not necessary to claim compensation (where none is wanted) for the breach (*Lock* v. *Pearce*, [1893] 2 Ch. 271), nor to specify what the lessee is required to do in order to remedy the breach (*Piggott* v. *Middlesex County Council*, [1909] 1 Ch. 134). The notice is necessary even to a peaceable re-entry without action (*Re Riggs*, [1901] 2 K. B. 16). And the notice is not defeated because it includes alleged breaches which have in fact not taken place (*Pannell* v. *City of London Brewery Co.*, [1900]

1 Ch. 496). In *Skinners' Co.* v. *Knight*, [1891] 2 Q. B. 542, it was held that the lessor's costs of employing a solicitor and surveyor to prepare the notice could not be claimed as compensation; but this decision seems to have been overruled by sect. 2, sub-sect. 1, of the Conveyancing and Law of Property Act, 1892, Appendix VI., *infra*. An assignee of a lease is a lessee within the meaning of this section, and a notice addressed to the original lessee and all others concerned, and served on the occupier is sufficient (*Cronin* v. *Rogers*, 1 Cab. & E. 348). An under-lessee is entitled to be relieved under sect. 4 of the Conveyancing and Law of Property Act, 1892, Appendix VI., *infra* (*Warden, &c. of Sir Roger Cholmeley's School at Highgate* v. *Sewell*, [1893] 2 Q. B. 254; *Ewart* v. *Fryer*, [1901] 1 Ch. 499, where the section is fully discussed and the decision in which was affirmed [1902] A. C. 187), and it has been held by the Court of Appeal that the section extends to a forfeiture for non-payment of rent (*Gray* v. *Bonsall*, [1904] 1 K. B. 601). Relief can only be given in an action (*Lock* v. *Pearce*, [1893] 2 Ch. 271), and not after an actual re-entry (*Rogers* v. *Rice*, [1892] 2 Ch. 170); though it is otherwise under sect. 212 of the Common Law Procedure Act, 1852 (see *Howard* v. *Fanshawe*, [1895] 2 Ch. 581). And as to the effect of relief being granted, see *Dendy* v. *Evans*, [1909] 2 K. B. 894; on appeal, [1910] 1 K. B. 263. As to the meaning of the words "lessor" and "lessee," and "under-lessee" or "derivative lessee," in this section and sect. 2 of the Act of 1892, see *Nind* v. *Nineteenth Century Building Society*, [1894] 2 Q. B. 226; *Wardens of Cholmeley School, Highgate* v. *Sewell*, [1894] 2 Q. B. 906; and *Imray* v. *Oakshette*, [1897] 2 Q. B. 218.

Relief was granted under this section in *Bond* v. *Freke*, W. N. 1884, 47; *Cresswell* v. *Davidson*, W. N. 1887, 87; 56 L. T. 811; and *Mitchison* v. *Thompson*, 1 Cab. & E. 72; and was refused in *Scott* v. *Brown*, W. N. 1884, 209; 51 L. T. 746.

IV.—Mortgages.

Obligation on mortgagee to transfer instead of reconveying.

Section 15.—Hitherto a mortgagee could not be compelled to transfer (*Dunstan* v. *Patterson*, 2 Phil. 345; Davidson's Prec. Conv. vol. ii. part ii. 4th ed. p. 280), but less responsibility attaches to a mortgagee on a transfer than on a reconveyance, because in the one case he has, and in the other he has not, to consider the title to the equity of redemption, and in practice a refusal by a mortgagee to transfer has seldom occurred. It is conceived, however, that the section only applies to the case of a *bonâ fide* transfer to a third person advancing the money, and that if the money were actually advanced by the mortgagor himself, a transfer to a third person as a trustee for him, or otherwise on his behalf, would enure for the benefit of intervening incumbrancers (see *Platt* v. *Mendel*, 27 Ch. D. 246).

In *Alderson* v. *Elgey*, 26 Ch. D. 567, a mortgagee of property in settlement which the tenant for life had obtained the usual order to redeem, refused to comply with a requisition by the latter to transfer the mortgage to a third person, and the refusal was upheld. It was decided that the tenant for life was only entitled to compel a transfer upon the terms of the order, which were considered to require that a trust corresponding with the limitations of the equity of redemption should be annexed to the legal estate; and the principle of the decision seems applicable to a similar requisition by a tenant for life who has not obtained such an order.

In *Everitt* v. *Automatic Weighing Machine Co.*, [1892] 3 Ch. 506, a shareholder was held entitled to require the company to assign under this section a debt due from him to the company, and their lien for such debt on his shares.

It was held in *Teevan* v. *Smith*, 20 Ch. D. 724, that

where there are several mortgages, the first mortgagee cannot under this section be required by the mortgagor to transfer to a nominee of his own, without the consent of any puisne mortgagee or mortgagees. But this decision seems to have been overruled by sect. 12 of the Conveyancing Act, 1882, Appendix V., *infra*, which provides that the right shall be exerciseable by each incumbrancer or by the mortgagor, and regulates the order in which requisitions by incumbrancers or the mortgagor are to be complied with. See *Smithett* v. *Hesketh*, 44 Ch. D. 161, where a jointress was allowed to redeem in her proper order as an incumbrancer.

As to the exclusion (sub-sect. 2) of a mortgagee in possession, see Coote on Mortgages; Robbins, pp. 803, 1416; 7th ed. pp. 821, 1439.

Power for mortgagor to inspect title deeds.

Section 16.—The effect of this section is to render covenants by mortgagees for production (or the acknowledgments substituted by sect. 9 for such covenants) unnecessary, except in very special cases. It should be borne in mind, however, that the section does not extend to mortgages made before the 1st January, 1882, and consequently that covenants for production, or acknowledgments under sect. 9 may be required in transfers of such mortgages. Hitherto there had been no means of compelling an unsatisfied mortgagee to produce the deeds in his custody relating to the mortgaged property.

Restriction on consolidation of mortgages.

Section 17.—The development of the doctrine of consolidation (as to which see Davidson's Prec. Conv. vol. ii. pt. ii. 4th ed. pp. 228 *et seq.*) received a check in *Jennings* v. *Jordan*, 6 App. Cas. 698, where it was held that the assignee of an equity of redemption is entitled to redeem the mortgage without redeeming a mortgage of other property made by the same mortgagor to the same mortgagee after the date of the assignment (see also *Harter* v. *Colman*, 19 Ch. D. 630; *Re Walhampton Estate*, 26

Ch. D. 391; *Withall* v. *Blyton*, W. N. 1885, p. 22; *Bird* v. *Wenn*, 33 Ch. D. 215; *Riley* v. *Hall*, [1898] W. N. 81; and *Hughes* v. *Britannia, &c. Society*, [1906] 2 Ch. 607). But in *Pledge* v. *White*, [1896] A. C. 187, the House refused to overthrow the doctrine as to consolidation of mortgages laid down in *Vint* v. *Padget*, 2 De G. & J. 611 (which had been thought to be impugned by *Jennings* v. *Jordan*), and held that a transferee of several mortgages is entitled to consolidate them, not only against the mortgagor, but also against an assignee of the equities of redemption, under an assignment made before the union of all the mortgages. The case has, however, no general application; see the comment upon it of Neville, J., in *Sharp* v. *Rickards*, [1909] 1 Ch. 109. Now the doctrine appears to be totally abolished by this section as regards mortgages (see the definition of this word in sect. 2 (vi.)) made on or after the 1st January, 1882. But its operation (see sub-sect. 3) is limited to cases where the mortgages or one of them were or was made on or after the 1st January, 1882. The section in terms deals only with consolidation proper, *i.e.*, where there are several mortgages, each on different properties of the mortgagor; but in *Re Salmon*, [1902] 1 K. B. 147, it was considered in relation to a case where there were several mortgages on the same property, one of them, however, comprising other property as well.

As to what amounts to a contrary intention within sub-sect. 2, see *Andrews* v. *City Permanent Benefit Building Society*, 44 L. T. 641, where the right of consolidation was held to be preserved by a covenant by the mortgagor to observe the rules of the society, one of which was framed with reference to the existence of such a right. In *Farmer* v. *Pitt*, [1902] 1 Ch. 954, on the other hand, where there was a mortgage not excluding the operation of the section, and a subsequent equitable mortgage with an agreement to execute a legal mortgage in such form as the mortgagee might require, it was held that the mortgagee was not

entitled to have a legal mortgage executed excluding the operation of the section. Mortgagees who have excluded this section may consolidate, although they have given notice to the mortgagor to pay off one of the mortgages (*Griffith* v. *Pound*, 45 Ch. D. 553).

In practice a mortgagee lending money to the same mortgagor upon the security of a different property, procures that property to be charged with the whole debt, and, in some form or other, takes, as a matter of course, a further charge on the original security for the amount of the new loan, unless satisfied that both securities are sufficient. And it can seldom be proper to anticipate, in an original security, the contingency that the mortgagee may become entitled to securities on other property of the mortgagor, and may fail to secure the right to consolidate them. (See *Farmer* v. *Pitt, ubi supra.*)

The costs of a foreclosure action in respect of distinct mortgages, by virtue of this section or otherwise not liable to be foreclosed, are not chargeable against both estates, but must be apportioned (*De Caux* v. *Skipper*, 31 Ch. D. 635).

Leasing powers of mortgagor and of mortgagee in possession.

Section 18.—The common power of leasing in mortgages requires that the lessee's covenants shall be entered into with the mortgagee. But there is little doubt that in leases under powers the benefit of such covenants, with whomsoever entered into, is annexed to the legal reversion. See *Greenaway* v. *Hart*, 14 C. B. 340; Davidson's Prec. Conv. vol. iii. 3rd ed. pp. 494 *et seq.*, and vol. ii. pt. ii. 4th ed. p. 335 n. And sects. 10 and 11, *supra*, have the effect of annexing the benefit of the covenants and conditions of re-entry in leases under this power to the legal reversion. See *Municipal Permanent Society* v. *Smith*, 22 Q. B. D. 70; and *Robbins* v. *Whyte*, [1906] 1 K. B. 125, where a surrender made to the mortgagor without the concurrence of the mortgagee was held void. Notwithstanding sect. 25 of the Judicature Act, 1873,

the right of re-entry for breach of covenants is enforceable only by the legal owner of the reversion (*Matthews* v. *Usher*, [1900] 2 Q. B. 535).

It may be considered an objection to the statutory power that it is not confined, like the common form (see the definition of mortgagor in sect. 2), to the mortgagor personally. But it can easily be so confined under the 14th sub-section.

And it must be borne in mind that under *every mortgage made since the Act,* the *mortgagor* (including a mortgagor of leaseholds) *has this power, unless it is excluded in writing,* which it should be at the time of the mortgage, wherever the circumstances render it improper. On mortgages of leaseholds (which are not within the Statute of Uses) it has hitherto been impossible to vest a legal power to grant leases in the mortgagor, and the device sometimes resorted to, of creating a sub-term in a third party upon trust to grant leases, is of course superseded by this section.

The power to exclude the operation of the section by any writing should render caution necessary in accepting a lease from either mortgagor or mortgagee under the section since such lease would not (it seems) be binding on the other, if the section had been so excluded, even though the lessee had no notice of the exclusion, and it may, therefore, be better, where it is intended that this leasing power should be applicable, expressly to declare this in the mortgage.

In *King* v. *Bird*, [1909] 1 K. B. 837, a lease under the section by a mortgagor in possession was held invalid against the mortgagee by reason of its including land other than the mortgaged land and reserving only one inclusive rent; but an option to determine the lease or to renew it was not considered an objection.

As to the meaning of building lease, see sect. 2.

The former law as to leases by mortgagors and mortgagees will be found in the note to *Keech* v. *Hall*, 1

Sm. L. C. See also Coote on Mortgages; Robbins, pp. 671 *et seq.*; 7th ed. pp. 692 *et seq.*; and Davidson's Prec. Conv. vol. ii. pt. ii. 4th ed. p. 335 n. Under this law the mortgagor's tenant had a right to redeem (see *Tarn* v. *Turner*, 39 Ch. D. 456), but it would be difficult to establish that such a right belongs to a lessee holding under a lease granted under the present power, and taking effect (as it would seem to do) out of the estate of the mortgagee. See as to the character of such a lease, *Wilson* v. *Queen's Club*, [1891] 3 Ch. 522; *John Brothers, &c. Co.* v. *Holmes*, [1900] 1 Ch. 188; *Browne* v. *Peto*, [1900] 2 Q. B. 653.

Mortgagee's power of sale.

Sections 19 to 24.—The power of sale given to mortgagees by Lord Cranworth's Act, 23 & 24 Vict. c. 145, Part II., repealed by sect. 71 of the present Act, applied to land only, and, even in regard to land, was seldom relied upon, probably because it did not come into operation until the principal had been unpaid for one year, or the interest had been in arrear for six months (three months being the period commonly specified with regard to an arrear of interest), and because it required six months' notice in all cases (instead of dispensing with notice where the interest is in arrear), and allowed less than the ordinary latitude in regard to the form and operation of the notice. The power of sale conferred on mortgagees by sect. 19 (i.) of the present Act as regulated by the subsequent sections, conforms in these respects to the ordinary form (as to which see Davidson's Prec. Conv. vol. ii. pt. ii. pp. 66 *et seq.*), from which it differs only in substituting two for three months in regard to an arrear of interest. See *Farrar* v. *Farrars, Ltd.*, 40 Ch. D. 395, in which the sale was made upon default in payment of interest, and which also contains a general discussion of the duties and responsibilities of a mortgagee selling under such circumstances. The position of a mortgagee exercising his power of sale

is considered generally in the recent cases of *Kennedy* v. *De Trafford*, [1897] A. C. 180, and *Nutt* v. *Easton*, [1899] 1 Ch. 873. See, as to the mode in which notices may be given, sect. 67.

The notice required by sect. 20, sub-sect. 1, may be waived, and the concurrence of second mortgagees in the conveyance to confirm a sale purporting to be made by the first mortgagee in no way affects the character of the sale (*Re Thompson and Holt*, 44 Ch. D. 492).

As to the construction of the sub-section, see *Barker* v. *Illingworth*, [1908] 2 Ch. 20, where the notice served fixed a time for payment.

Sect. 20 (iii.) confers considerable importance on covenants to insure and to keep up insurances (whether against fire or on lives), and other special covenants. But the practice of making the power of sale arise on breach of any such covenant had become common before the passing of the Act.

There can be no doubt that the statutory power has practically superseded express powers of sale in mortgages, except in special cases.

But in many cases variations and additions are required. Thus in a mortgage of real and personal property combined, trusts of the surplus proceeds of sale ought to be declared in favour of the mortgagor, his executors, administrators, and assigns, as personal estate, in order that the mortgagee may not be concerned to apportion such surplus proceeds among the persons entitled to the respective mortgage properties (see note to Precedent LVII., *infra*).

The power does not apply to the debentures of a joint-stock company (*Blaker* v. *Herts & Essex Waterworks Co.*, 41 Ch. D. 399; see *Re Barton-upon-Humber Water Co.*, 42 Ch. D. 585; and *Marshall* v. *South Staffordshire Tramways Co.*, [1895] 2 Ch. 36); nor apparently is it incorporated by the statutory form given by the Bills of Sale Act, 1882 (*Calvert* v. *Thomas*, 19 Q. B. D. 204). It

does not (though Lord Cranworth's Act did) enable the mortgagee to convey any greater estate than may be comprised in the mortgage (*Re Hodson & Howes' Contract*, 35 Ch. D. 668; *Re Solomon & Meagher's Contract*, 40 Ch. D. 508), although, on a sale of a part of the mortgaged property, he can give to the purchaser an easement by implication, if not by express grant, over the unsold part (*Born* v. *Turner*, [1900] 2 Ch. 211); or to sell fixtures apart from the land (*Re Yates, Batcheldor* v. *Yates*, 38 Ch. D. 112; and see *Climpson* v. *Coles*, 23 Q. B. D. 465; *Small* v. *National Provincial Bank of England*, [1894] 1 Ch. 686, deciding, apparently, that such a power, if given, constitutes the deed a bill of sale; *Re Brooke*, [1894] 2 Ch. 600). The power of sale under sect. 19 only exists where the mortgage is by deed, but the old law that a mortgagee not by deed of a chattel or of stock or shares had by implication a power of sale remains unaffected (*Dererges* v. *Sandeman, Clark & Co.*, [1902] 1 Ch. 579).

Sect. 21, sub-sect. 2, which enacts that the title of the purchaser in professed exercise of the statutory power shall be unimpeachable on the ground of irregularity in the exercise of the power, is intended solely for the protection of purchasers, and does not preclude a purchaser from objecting to the title on the ground that the exercise was improper (*Life Interest and Reversionary Securities Corporation, Ltd.* v. *Hand-in-Hand Fire Insurance Society*, [1898] 2 Ch. 231). Sub-sect. 3 should be read in connection with sect. 5. It should be noticed that a first mortgagee, having notice of a second mortgage, and nevertheless paying the surplus proceeds of sale to the mortgagor, will be liable in damages to the second mortgagee (*West London Commercial Bank* v. *Reliance Permanent Building Society*, 29 Ch. D. 954).

Mortgagee's power to insure.

The power given to mortgagees by sect. 19 (ii.) to insure such parts of the mortgaged property as are of an insurable nature, and to charge the property with the

premiums paid and interest, appears to be sufficient for the purpose, but does not dispense with the necessity in suitable cases of a covenant by the mortgagor to insure and repair; and where provisions as to repair are required, a charge upon the property of the sums expended in repairs, with interest, should be added, as before the Act. See as to insurance and repair of mortgaged property, Davidson's Prec. Conv. vol. ii. pt. ii. 4th ed. pp. 53 *et seq.*

The limitation in sect. 23, sub-sect. 4, on the right of a mortgagee to have the insurance money applied in or towards discharge of the mortgage debt, no doubt refers to sect. 83 (unrepealed) of the old Metropolitan Building Act, 14 Geo. 3, c. 78, which has been held to be of general application (*Ex parte Goreley,* 4 De G. J. & S. 477; *Re Quicke's Trusts,* [1908] 1 Ch. 887), and in effect to enable any person interested in the property to require that the insurance money shall be laid out in rebuilding. See, however, *Rayner* v. *Preston,* 18 Ch. D. 1; *Castellain* v. *Preston,* 11 Q. B. D. 380; *West of England Fire Insurance Co.* v. *Isaacs,* [1896] 2 Q. B. 377; [1897] 1 Q. B. 226; and also *Westminster Office* v. *Glasgow Provident Society,* 13 App. Cas. 699.

Mortgagee's power to appoint a receiver.

The power given to mortgagees by sect. 19 (iii.) to appoint a receiver (see also sect. 24), is substantially the same as that given by Lord Cranworth's Act, Part I. (repealed by sect. 71 of the present Act, and as to which see Davidson's Prec. Conv. vol. ii. pt. ii. 4th ed. pp. 99 *et seq.*), except that it does not come into operation until the mortgagee has become entitled to exercise the power of sale conferred by the Act, and in this respect is less stringent as regards the mortgagor. Presumably it does not authorise the appointment of a receiver and manager (*Whitley* v. *Challis,* [1892] 1 Ch. 64; see also *County of Gloucester Bank* v. *Rudry, &c. Colliery Co.,* [1895] 1 Ch. 629). The statutory power is no doubt proper and beneficial to both parties, but it is conceived that where

at the time of the mortgage there is a probability that the services of a receiver will be required, an ordinary receivership deed, with the ordinary provision that the receiver shall not act unless interest is in arrear, ought to be executed, inasmuch as the provisions of such an instrument better accord with the intentions of the parties. And where an action for foreclosure is pending, it may be desirable that the appointment should be made by the Court (*Tillett* v. *Nixon*, 25 Ch. D. 238). After the appointment of a receiver, the mortgagor will be restrained from distraining (*Woolston* v. *Ross*, [1900] 1 Ch. 788 . A receiver appointed under the Act, and acting in the name of the mortgagor, incurs no personal liability (*Owen & Co.* v. *Cronk*, [1895] 1 Q. B. 265; *Burt* v. *Bull*, *ib.* 276 . Such an appointment in respect of book debts does not take them out of the order and disposition of the mortgagor (*Rutter* v. *Everett*, [1895] 2 Ch. 872). The position of a receiver as regards repairs is discussed in *White* v. *Metcalf*, [1903] 2 Ch. 567.

Mortgagee's power to cut timber.

The power, which by sect. 19 (iv.) is given to mortgagees in possession, to cut ripe timber not ornamental, is new. The rule had hitherto been that a mortgagee in possession will be restrained from cutting timber, unless the security is deficient (*Witherington* v. *Banks*, Sel. Ca. Chy. 31; and cf. *Simmons* v. *Shirley*, 6 Ch. D. 173); and that a mortgagor in possession will not be restrained from cutting timber, unless the security is deficient (*Humphreys* v. *Harrison*, 1 Jac. & W. 581 ; *Hippesley* v. *Spencer*, 5 Mad. 422; *King* v. *Smith*, 2 Ha. 239), and even in that case not from cutting underwood in the usual course of husbandry (*Humphreys* v. *Harrison*, *ubi supra*). See also Craig on Trees and Woods, ch. vi.

Mortgagee's receipt clause.

The provisions of sect. 22 seem to render unnecessary the clauses hitherto in use with respect to the receipt and application of policy and other moneys comprised in a mortgage, as to which see Davidson's Prec. Conv. vol. ii. pt. ii. 4th ed. p. 131. They are substantially the

same as these clauses; and the power given by sub-sect. 1 effectually protects trustees and others paying over the mortgaged funds to the mortgagee (*Re Bell*, [1896] 1 Ch. 1; *Hockey* v. *Western*, [1898] 1 Ch. 350). It should be observed, however, that trustees are not bound to pay over more than the amount due on the mortgage (*S. C.*). The provisions of the sections under consideration, except sub-sects. (1) and (4) of sect. 21, are applied by the Land Transfer Act, 1897, sect. 9 (2) to registered charges.

Sale of mortgaged property in action.

SECTION 25.—Repeals the 48th section of the Chancery Procedure Act, 1852, 15 & 16 Vict. c. 86, and re-enacts in a more comprehensive form the provisions of that section as to sales in actions respecting mortgaged property. An order under this section for the sale of mortgaged property may, it seems, be made, on an interlocutory application, notwithstanding the opposition of some persons interested (*Woolley* v. *Colman*, 21 Ch. D. 169), and at any time after a decree for foreclosure before the action is concluded by the foreclosure becoming absolute (*Union Bank of London* v. *Ingram*, 20 Ch. D. 463). See also *Wade* v. *Wilson*, 22 Ch. D. 235, where the mortgagee asked for a sale, and the mortgagor not appearing, the Court ordered an account of what was due, and then a sale of enough to satisfy the debt. In *Green* v. *Biggs*, W. N. 1885, p. 128, three months after the certificate was allowed for redemption; and in *Davies* v. *Wright*, 32 Ch. D. 221, the mortgagors were given the conduct of the sale, and were not required to give security for costs. But see *Brewer* v. *Square*, [1892] 2 Ch. 111. A sale has been ordered under this section at the instance of an equitable mortgagee by deposit, though there was no memorandum of charge or agreement to execute a legal mortgage (*Oldham* v. *Stringer*, 51 L. T. 895; 33 W. R. 251). An order for sale was made on terms in *Norman* v. *Beaumont*, W. N. 1893, 45 (and see *Charlewood* v. *Hammer*, 28 Sol. J. 710; and *Williams* v. *Owen*, 27

Sol. J. 256); and was refused in *Provident Clerks Mutual Life Assurance Association* v. *Lewis*, 67 L. T. (N. S.) 644.

V.—Statutory Mortgage.

Forms of statutory mortgage and transfer of mortgage.

Sections 26 to 28.—The statutory forms referred to in these sections are believed to be in use to a greater extent than might have been anticipated, but are not to be recommended. They are but little shorter than the ordinary forms, and they do not express in an intelligible way the effect they are intended to have. The Act, it may be mentioned, does not apply to the case of a transfer in the statutory form of the benefit of a mortgage made before the commencement of the Act (*Re Beachey*, [1904] 1 Ch. 67).

It was unsuccessfully contended in *Re Errington*, [1894] 1 Q. B. 11, that a mortgage in the statutory form creates a personal liability on the part of an assignee of the equity of redemption to pay the interest.

Form of reconveyance of statutory mortgage.

Section 29.—It may be regretted that the necessity of a reconveyance for revesting the estate in the mortgagor, on payment off of the mortgage, has not been abolished. A mortgage of an equitable estate is discharged by the receipt of the mortgagee for the mortgage money (*a*), and the principle has been extended to mortgages of legal estates, in the case of building societies, whose endorsed receipt vacates any security to them (37 & 38 Vict. c. 42, s. 42 (*b*)). Perhaps a difficulty was apprehended as regards the stamp duties which are imposed on reconveyances, and which, of course, would have to be imposed also on receipts operating as reconveyances.

(*a*) See the observations on sect. 30.

(*b*) A precedent of a mortgage to such a society will be found *infra*.

VI.—Trust and Mortgage Estates on Death.

Devolution of trust and mortgage estates on death.

Section 30.—The 4th section of the Vendor and Purchaser Act, 1874, Appendix II., *infra*, enabled the legal personal representative of a mortgagee to reconvey on payment of all sums secured by the mortgage, but did not extend to a release where the whole debt was not paid, or to a transfer (*Re Spradbery's Mortgage*, 14 Ch. D. 514), or to a conveyance under a power of sale (*Re White's Mortgage*, W. N. 1881, p. 115; 29 W. R. 820), and, even if left unrepealed, would have been superseded by that under consideration. The 48th section of the Land Transfer Act, 1875, substituted for sect. 5 of the Vendor and Purchaser Act, 1874 (*a*), extended only to hereditaments of which a bare trustee (*b*) was seised in fee simple, and as to which he had died intestate.

The word "hereditaments" clearly includes copyholds. And but for the interpretation clause, sect. 2 (ii.), which defines "land" as including copyholds, but does not define hereditaments, it could not have been doubted that the section under consideration extended to copyholds. This doubt was thought to have been removed by the decision in *Re Hughes*, W. N. 1884, p. 53. But the section was repealed by the Copyhold Act, 1887 (50 & 51 Vict. c. 73, s. 45; see also sect. 88 of the Copyhold Act, 1894, 57 & 58 Vict. c. 46), so far as it relates to land vested in the tenant on the rolls (see *Re Mills' Trusts*, 37 Ch. D. 312; on appeal, 40 Ch. D. 14), and the repeal seems to render it proper that copyhold and customary estates held on trust or by way of mortgage should be devised as formerly. It is said (*c*) that the word "hereditaments" was used in

(*a*) The section referred to of the Land Transfer Act is set out in a note to sect. 5 of the Vendor and Purchaser Act, Appendix II., *infra*.

(*b*) See *Re Docwra*, 29 Ch. D. 693; *Re Cunningham and Frayling*, [1891] 2 Ch. 567.

(*c*) By the late Mr. Wolstenholme.

this section instead of "land" for the purpose of including personal inheritances, *e.g.*, an annuity to one and his heirs.

The section does not extend to an estate *pur autre vie* held on trust or mortgage, where such estate is limited to executors or administrators as special occupants, or where there is no special occupant. Such a trust or mortgage estate may still be disposed of by will, but, if not so disposed of, will pass to the executor or administrator under sect. 6 of the Wills Act, 1 Vict. c. 26.

The words "notwithstanding any testamentary disposition" preclude a specific disposition by will of those trust or mortgage estates to which this section, as modified by the Copyhold Act, 1894, applies. See *Re Clowes*, [1893] 1 Ch. 214. The editors see nothing in the section to justify the view that such a disposition could be rendered legally effective by the executor's assent, as would be the case with a specific bequest of a chattel real. The express direction that the trust or mortgage estate is to vest in the personal representative seems conclusive against an executor's having power to prevent such vesting by assenting to any other disposition thereof made by the will. It has been suggested (*a*) that a testator, wishing that his trust (or mortgage) estates should go to particular persons, may effect his purpose by appointing those persons executors for that purpose. But this seems doubtful (*Re Parker's Trusts*, [1894] 1 Ch. 707).

How trust and mortgage estates are to be dealt with where there is no legal personal representative of the testator, *e.g.*, on the death of a trustee or mortgagee intestate, until administration has been taken out to his estate, is not clear, but it would seem that it will not be safe in such a case to take a conveyance from the heir, whose title is (apparently) altogether ousted by the

(*a*) By the late Mr. Wolstenholme.

section. See *Re Pilling's Trusts*, 26 Ch. D. 432; *Re Rackstraw's Trusts*, 33 W. R. 559; W. N. 1885, 73. Perhaps a limited administration may be obtained in such cases. But it seems clear that an effectual appointment and vesting order can generally be made under the Trustee Act, 1893 (*Re Williams' Trusts*, 36 Ch. D. 231).

The section caused considerable change in the ordinary forms of settlements and mortgages of freeholds of inheritance, the result of it being that the trusts and powers formerly purported in such instruments to be vested in the heirs of the trustee or mortgagee, or of the survivor of the trustees or mortgagees (as the case may be), are now purported to be vested in his executors or administrators.

Where an estate is devised to several persons, their heirs and assigns in trust, and a power of sale is given to the trustees or trustee for the time being, the executors of the last surviving trustee can make a good title under this section (*Re Pixton and Tong's Contract*, W. N. 1897, 178). But if a trust or power is vested in a person named as trustee but without any mention of his heirs either as a word of limitation or otherwise, the section does not enable the trust or power to be executed by his personal representatives (*Re Crunden and Meux's Contract*, [1909] 1 Ch. 690). And where a testatrix devised her property to the persons who should at her death be the trustees of her father's will, upon certain trusts, the executors of the last surviving trustee of that will who had acted in the trusts of it were held to be trustees of the will of the testatrix (*Re Waidanis*, [1908] 1 Ch. 123).

It may be pointed out in reference to the effect of this section on mortgage estates, that, upon payment off of a mortgage of an equitable estate, no reconveyance was ever necessary, since the equitable interest of the mortgagee ceased on the mortgage debt being satisfied, and he had no legal interest to reconvey, or release, though a reconveyance was often taken, as a convenient mode of evidencing

its discharge (*a*). Many titles have been accepted on this principle, and more perhaps in which equitable mortgages so discharged have not been disclosed. And a doctrine so well recognised in practice can hardly be affected by the tendency now being manifested, but as yet by no means established, to treat dispositions of equitable estates as needing to be in some respects accompanied by formalities and technicalities, generally hitherto supposed to be peculiar to the common law. See *Re Whiston's Settlement*, [1894] 1 Ch. 661; *Re Tringham's Trusts*, [1904] 2 Ch. 487; *Re Irwin*, *ib.* 752; *Re Oliver's Settlement*, [1905] 1 Ch. 191.

Finally it should be observed that this section is not repealed by the Land Transfer Act, 1897, Part I. (Appendix XVIII., *infra*), and presumably still governs the devolution of trust and mortgage estates on death.

Part VII. of the Act, containing sects. 31 to 38, both inclusive, and relating to trustees and executors, is repealed by the Trustee Act, 1893 (Appendix XVI., *infra*).

VIII.—Married Women.

Power for Court to bind interest of married woman.

Section 39.—Formerly where property was settled on a married woman without power of anticipation, there was no power to dispense with the restraint (*Robinson* v. *Wheelwright*, 21 Beav. 214; 6 De G. M. & G. 535; see also *Peillon* v. *Brooking*, 25 Beav. 218; and *Stanley* v. *Stanley*, 7 Ch. D. 589, and cases there cited). The present section does not authorise the Court to remove the restraint, but it does enable the Court to bind the interest of a married woman in spite of the restraint when a disposition is made which the Court considers

(*a*) It is considered that an endorsed receipt on satisfaction of the mortgage does not require any stamp. See the Stamp Act, 1891, Schedule 1, Receipt (11).

to be for her benefit (*Re Warren's Settlement*, W. N. 1883, p. 125; 52 L. J. Ch. 928; but see *Re Flood's Trust*, 11 L. R. Ir. 355), and it will be cautiously and sparingly exercised (*Re Little, Harrison* v. *Harrison*, 40 Ch. D. 418). In *Tamplin* v. *Miller*, W. N. 1882, p. 44; 30 W. R. 422, V.-C. Hall gave effect to a compromise of the claims of a married woman on certain trust property, remarking, however, that a married woman would not be allowed to get rid of the restraint merely because she desired to use the property, or to benefit her husband (see *Re S.'s Settlement*, W. N. 1893, 127), and that he should require very strong grounds to be presented to him before acceding to applications under the section. In *Hodges* v. *Hodges*, 20 Ch. D. 749, a married woman was entitled to the income of a fund in Court for her life for her separate use without power of anticipation. She was childless, and past the age of child-bearing, and the ultimate trusts of the fund, on failure of her issue, were for such persons as she should by will appoint, and in default of appointment, for herself absolutely. Consequently, it was considered that the fund must, after her death, become subject to the payment of her debts, whether she made any appointment by will or not, as to which, however, see the cases cited under sect. 4 of the Married Women's Property Act, 1882 (Appendix XII., *infra*); and Mr. Justice Fry, upon her request and that of her husband, ordered a portion of the fund to be paid to her to enable her to pay debts for which her creditors were pressing. An order has been made under this section for the purpose of enabling a partition and resettlement of the property to be effected (*Re Currey*, W. N. 1887, 28; 56 L. T. 80); but it has been thought that no such order ought to be made where the restraint is enforced by a forfeiture clause (*Re Jordan*, W. N. 1886, 6; 54 L. T. 127). Other cases under this section are *Re Flood's Trusts, ubi supra* (where the married woman was emigrating); *Re Thompson*, W. N. 1884, 28 (where she

was in business); *Re Tippett and Newbould's Contract,* 37 Ch. D. 444 (where a sale was desirable); *Re Segrave's Trust,* 17 L. R. Ir. 373; *Bates* v. *Kesterton,* [1896] 1 Ch. 159 (to facilitate a sale); *Re a Marriage Settlement,* 30 Sol. J. 702 (where the husband was embarrassed by debts incurred in repairing houses belonging to the wife for her separate use); *Latham* v. *Latham,* W. N. 1889, 171 (where the married woman was past child-bearing and in debt); *Re Milner's Settlement,* [1891] 3 Ch. 547 (where interest on mortgage debts of the husband and premiums on policies on his life were allowed to be paid out of the income of the property, the husband being in embarrassed circumstances, but earning a large professional income); *Re Pollard's Settlement,* [1896] 1 Ch. 901; 2 Ch. 552 (where there had been extravagance, and recourse to money-lenders, and an order was refused in consequence); *Thomson* v. *Thomson,* [1896] P. 263 (where it was held that the restraint could not be removed after a divorce so as to render binding an agreement entered into before); *Paget* v. *Paget,* [1898] 1 Ch. 470 (as to the liability of a husband to indemnify the wife in cases where the restraint has been removed under this section to enable the payment of his debts); and *Re Blundell,* [1901] 2 Ch. 221 (where the object was merely to obtain a larger income and the application was refused). The order in *Hodges* v. *Hodges,* 20 Ch. D. 749, was made upon an affidavit of the married woman, but the judge intimated a doubt, whether, as a rule, the consent of the applicant ought not to be taken by a separate examination in the ordinary way (see *Musgrave* v. *Sandeman,* 48 L. T. 215). The trustees of the settlement need not, it appears, be served with notice of the application (*Re Little's Will, Re Harrison,* 36 Ch. D. 701).

Under Malins' Act, 20 & 21 Vict. c. 57, a married woman with the concurrence of her husband may, by deed acknowledged, dispose of reversionary interests in personalty to which she or her husband in her right is

entitled under any instrument, except her marriage settlement, made after the 31st of December, 1857 (see *Re Elcom*, [1894] 1 Ch. 303), unless the instrument restrains her from alienation. The section under consideration enables the Court to bind reversionary interests which a married woman might under that Act dispose of, were she not restrained from alienation, and probably extends also to all other reversionary interests, whether inalienable by the terms of the instrument creating them or not, but as to reversionary interests in money arising from the sale of or charged on land which savour of the realty, and are not within the ordinary equitable rule precluding married women from disposing by anticipation of reversions in personal estate (see Davidson, Prec. Conv. vol. ii. pt. ii. 4th ed. pp. 223 *et seq.*), no special provisions were required. With respect to the power of impounding the interest of a married woman subject to restraint, see the Trustee Act, 1893 (Appendix XVI., *infra*), s. 45. And see also the Married Women's Property Act, 1893 (Appendix XIII., *infra*), s. 2, as to ordering costs to be paid out of like interests.

Acknowledgments of deeds by married women.

The Bill as sent down to the Commons contained a clause abolishing acknowledgments by married women. This clause was struck out in committee; but the Conveyancing Act, 1882 (Appendix V., *infra*), s. 7, enables acknowledgments to be taken by one perpetual or special commissioner, and renders it unnecessary to inquire whether the certificate of an acknowledgment taken after the commencement of that Act has been filed. However, under the Married Women's Property Act, 1882 (Appendix XII., *infra*), every married woman is capable (see sect. 1) of acquiring, holding, and disposing by will or otherwise of real or personal property as her separate property in the same manner as if she were a *feme sole*, and every woman married on or after 1st January, 1883 (see sect. 25), is entitled (see sect. 2) to hold as her

separate property (*a*), and dispose of accordingly, all property which may belong to her at the time of her marriage, or which may be acquired by or devolve upon her after her marriage; while every married woman married before 1st January, 1883 (see sect. 5), has a like interest in and power over property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, may accrue on or after that day. The result of these sections seems to be to abolish altogether the necessity for acknowledgment, except in the case of a deed executed by a woman married before 1st January, 1883, for the purpose of disposing of property which belonged to her, or in which she had some interest before that day (*b*).

Power of attorney by married woman.

Section 40.—See sects. 46, 47, and 48, and sects. 8 and 9 of the Conveyancing Act, 1882 (Appendix V., *infra*). A married woman cannot, at common law, constitute an attorney to execute a deed, or to do any other act. But by 1 Will. 4, c. 65, married women were empowered to appoint attorneys on their behalf, to take admittance to copyholds, and to surrender copyholds for the purpose of suffering customary recoveries, or to surrender leases under the direction of the Court, for purposes of renewal. For the form of an order for pay-

Trust property under Married Women's Property Act, 1882.

(*a*) In *Re Harkness and Allsopp's Contract*, [1896] 2 Ch. 358, Mr. Justice North decided in effect that the Act did not apply to trust property. The decision gave rise to much inconvenience, and it has at length been overruled by the Married Women's Property Act, 1907 (Appendix XIV., *infra*), s. 1, which has a retrospective operation. As to a married woman who is a bare trustee, see sect. 16 of the Trustee Act, 1893 (Appendix XVI., *infra*), and *Re Howgate and Osborn's Contract*, [1902] 1 Ch. 451.

As to reversionary and contingent interests of women married before 1883.

(*b*) Property to which a married woman was at the commencement of the Act entitled in reversion or remainder, and which has since fallen into possession, is not within sect. 5: *Reid* v. *Reid*, 31 Ch. D. 402; see also *Re Michell's Trusts*, 9 Ch. D. 5.

ment of dividends to a married woman's attorney, see *Stewart* v. *Fletcher*, 38 Ch. D. 627.

IX.—Infants.

Sales and leases on behalf of infant owner.

Section 41.—By the operation of this section the Court is able to sanction sales and leases of unsettled land belonging absolutely to an infant, and that even though the infant be only contingently interested (*Re Sparrow's Settled Estate*, [1892] 1 Ch. 412). Leases of such land might have been granted by the Court before the Act under 11 Geo. 4 & 1 Will. 4, c. 65 (see *Re Letchford*, 2 Ch. D. 719; *Re Griffiths*, 29 Ch. D. 248), which also authorised infants to grant renewals of leases under the direction of the Court. And it is conceived that the effect of this section is to authorise a guardian to grant leases of his ward's unsettled land under sect. 46 (see also sect. 49) of the Settled Estates Act, 1877. As to leases by a guardian generally, see Davidson's Prec. Conv. vol. v. pt. i. 3rd ed. p. 258 n. But where the infant is entitled in possession, the section seems as a general rule to be abrogated for practical purposes by the effect of sects. 59 and 60 of the Settled Land Act, 1882 (Appendix VII., *infra*), which enables all the extensive powers of that Act to be exercised by the trustees of the settlement, or by persons appointed for the purpose by the Court on behalf of any infant seised of or entitled in possession to land.

Management of land and receipt and application of income during minority.

Section 42.—The power given by this section has, to a great extent, superseded the minority clause formerly inserted in wills and settlements of real estate (*a*). But it

(*a*) The Act does not contain any definition of the word "settlement," but sub-sect. 7 of the present section refers to the "instrument," under which the infant's interest arises, and "instrument,"

is proper in such instruments to specially appoint trustees for the purposes of the section, whether the instrument does or does not contain a power of sale exercisable by or with the consent of trustees (see *Re Helyar*, [1902] 1 Ch. 391, where persons named as trustees for the purposes of the Settled Land Acts were held not to be trustees under this section), and (as a general rule) to declare that any fund which may be accumulated under the section shall, in the events mentioned in the third branch of subsect. 5, be held upon the same trusts as funds representing monies arising under the power of sale.

But it may be doubted whether the provisions of the section will work satisfactorily where there are limitations to females as tenants in common in fee simple or in tail, or where there is a Name and Arms, or other shifting clause.

The common minority clause is confined to minorities of tenants for life or in tail *by purchase*, it being generally considered that indefinite trusts for accumulation during minorities are invalid (see Davidson's Prec. Conv. vol. iii. pt. ii. p. 465 n.). The statutory power, it will be observed, is not similarly confined, and is, in that respect, more beneficial than the common clause.

It may be useful also to point out that the section only applies where the infant is entitled *in possession*, and consequently that it does not apply in the case of an infant contingently interested, *e.g.*, under a devise to him if and when he attains twenty-one, or as one of a class attaining twenty-one. It applies to the case of an infant taking by descent (*Re Cowley*, [1901] 1 Ch. 38).

An application for the appointment of trustees for the

as defined in sect. 2 (xiii.), includes will; and it is conceived that the word "settlement" strictly and properly refers to any instrument (whether testamentary or *inter vivos*) creating a settlement. See also the definitions of the word in the Settled Estates Act, 1877, and the Settled Land Act, 1882 (Appendix VII., *infra*).

purposes of this section may be made by summons (*Re Clay*, 30 Sol. J. 619).

Application by trustee of income of property of infant for maintenance, &c.

SECTION 43.—The corresponding section (26) of Lord Cranworth's Act is repealed by sect. 71 of the present Act. It had been supposed that the power given by the repealed enactment did not extend to income to which the infant was only entitled in expectancy, but the contrary was decided in *Re Cotton*, 1 Ch. D. 232; and there can be no question that the power given by the present section includes such income (*Re Holford*, [1894] 3 Ch. 30; *Re Moody*, [1895] 1 Ch. 101; *Re Woodin*, [1895] 2 Ch. 309; *Re Jeffery*, [1895] 2 Ch. 577).

But the application for the benefit of an infant of income to which he or she is not, or would not eventually become entitled, as, for instance, income of a fund set apart to answer a contingent legacy not carrying interest (*Re George*, 5 Ch. D. 837), or of real estate specifically devised *in futuro*, is not authorised by the present any more than by the former enactment (*Re Dickson*, 28 Ch. D. 291, in C. A., 29 Ch. D. 331; see also *Re Judkin's Trusts*, 25 Ch. D. 743; *Re Inman*, [1893] 3 Ch. 518). It should be observed that real estate devised to a class of persons who shall satisfy a particular condition, vests in the first person who satisfies the condition, though it opens out to let in others who afterwards satisfy the condition (*Re Averill*, [1898] 1 Ch. 523). Maintenance, therefore, cannot be given under this section out of the rents and profits of real estate so circumstanced.

The statutory power is not exercisable after minority (*Re Breed's Will*, 1 Ch. D. 226).

It will be noticed that the power applies (differing in this respect from that given by Lord Cranworth's Act) to property held in trust for an infant for life; and as regards personal property, the expression (though inaccurate) must be considered as including money and securities, to the income of which the infant is entitled

for life, either absolutely or contingently, or subject to forfeiture (*Re Long*, W. N. 1901, 166). But it does not apply where the interest is less than a life interest.

It should also be noticed that the income may be applied for the infant's maintenance, education, or *benefit*. As to the meaning of the last word, see *Lowther* v. *Bentinck*, L. R. 19 Eq. 166; *Re Breed's Will, ubi supra;* and *Re Gore's Settlement Trusts*, W. N. 1876, 78; see also *Molyneux* v. *Fletcher*, [1898] 1 Q. B. 648.

A direction to accumulate is not, it seems, an expression of a contrary intention within sub-sect. 3 (*Re Thatcher's Trusts*, 26 Ch. D. 426). See also *Re Walker*, [1901] 1 Ch. 879, where there was a direction to accumulate all the income beyond a specified sum.

The destination of accumulations under the section, where the infant has a vested but defeasible interest, or is a life tenant, has been much discussed; but it has now been decided after a conflict of judicial opinion, that the words "property from which the same arise" in sub-sect. (2) mean the property the income arising from which has been accumulated, and that the accumulations form an accretion to the capital for the benefit of all the persons interested therein (*Re Bowlby*, [1904] 2 Ch. 685).

An executor has been held to be a trustee, within the meaning of this section, of residuary personal estate bequeathed directly to an infant (*Re Smith*, 42 Ch. D. 303). See, however, *Re Jane Davis*, [1891] 3 Ch. 119; *Re Swain*, [1891] 3 Ch. 233.

X.—Rent-Charges and other Annual Sums.

Remedies for recovery of annual sums charged on land.

Section 44.—A power of distress was annexed to rents by 4 Geo. 2, c. 28, s. 5 (Davidson's Prec. Conv. vol. iii. pt. i. 3rd ed. p. 314, and see *Dodds* v. *Thompson*, L. R. 1 C. P. 133; *Dawson* v. *Robins*, 2 C. P. D. 38; *Re Lord*

Gerard and Beecham's Contract, [1894] 3 Ch. 295), but the practice of expressly limiting a power of distress to owners of rent-charges had been preserved. The present section gives such a power to all owners of rent-charges, whether legal or equitable, and is generally considered as rendering the express limitation of a power of distress unnecessary.

Formerly a right of entry only arose where expressly given, but it is now implied like a power of distress, by virtue of the present section.

A power, such as that given by the section (sub-sect. 4), to demise the land upon trusts for raising the rent-charge, had been of late frequently inserted in limitations of rent-charges, in order to avoid the actual limitation by the settlement or will of a term of years, the trusts of which never were, in most cases, put in operation. This section facilitates the omission, in wills and settlements, of terms for securing jointure or other rent-charges. In a conveyance on sale in consideration of a perpetual rent-charge, it is perhaps more usual not to limit such a term as interfering needlessly with the title of the purchaser, and in such a case the power may require to be excluded.

It will be observed that the powers given by the section extend to all annual sums charged on land by an instrument coming into operation on or after the 1st January, 1882, other than rent incident to a reversion. It would seem, therefore, that they are exercisable by a person purporting to make a lease, but who has, in fact, no reversion either at law or by estoppel.

By sect. 9 of the Settled Land Act, 1890 (Appendix XI., *infra*), power is given to a tenant for life to reserve on a grant in fee for building purposes a rent-charge accompanied by these powers.

Redemption of quit-rents and other perpetual charges.

Section 45.—This section (which has only a limited application, see sub-sects. 5 and 7) would appear to be of little use, since it affords no means of getting at the title

to the rent, or of redeeming where the title is unknown, or the rent is in settlement. And a limited owner could not be advised to redeem under the section, since it does not appear that he would by redeeming acquire any charge on the land for the redemption-money (sub-sect. 3). See, however, as to the position of a life-tenant redeeming a mortgage or charge on the settled estates, *Jameson* v. *Stein*, 21 Beav. 5; *Morley* v. *Morley*, 5 De G. M. & G. 610; *Lord Kensington* v. *Bouverie*, 7 De G. M. & G. 134; and compare *Isaac* v. *Wall*, 6 Ch. D. 706. The copyhold commissioners mentioned in this section became, by virtue of the Settled Land Act, 1882 (Appendix VII., *infra*), the land commissioners, and were by the Board of Agriculture Act, 1889, 52 & 53 Vict. c. 30, merged in the Board of Agriculture, now styled the Board of Agriculture and Fisheries (see 3 Edw. 7, c. 31).

XI.—Powers of Attorney.

Execution under power of attorney.

Section 46.—The meaning of the words "by the authority of the donor of the power," in this section is not clear. But there seems to be no ground for supposing that they limit the application of the section to cases in which the donor of the power has expressly authorised the attorney to act in his own name. In fact, sub-sect. 2, which extends the section to powers created before the commencement of the Act, precludes this construction. The insertion of the section was probably suggested by *Lawrie* v. *Lees*, 14 Ch. D. 249, affirmed in D. P., 7 App. Cas. 19. An attorney should, as a rule, execute in the name of his principal in the same manner as before the Act, and so state (*Re Whitley Partners, Ltd.*, 32 Ch. D. 337).

Payment by attorney under power

Section 47.—This section is somewhat wider in its terms than the similar clause 23 of the Trustee Act, 1893

(Appendix XVI., *infra*), which only protects trustees, executors, and administrators acting in pursuance of powers of attorney. Neither statute validates the protected payment or act. As to the general law on the subject, see Davidson's Prec. Conv. vol. i. pt. i. 4th ed. 475 n.; and *Watson* v. *King*, 4 Camp. 272; *Bailey* v. *Collett*, 18 Beav. 179, there cited; also *Mutual Provident &c. Society* v. *Macmillan*, 14 App. Cas. 596; *Re Oriental Bank*, 28 Ch. D. 634, 640.

without notice of death, &c., good.

Under sect. 8 of the Conveyancing Act, 1882 (Appendix V., *infra*), a power of attorney, *given for valuable consideration and by the instrument creating the power expressed to be irrevocable*, is in favour of a purchaser permanently effectual, and under sect. 9 of the same Act a power of attorney, *whether given for valuable consideration or not, if by the instrument creating the power expressed to be irrevocable for a fixed time therein specified not exceeding one year from the date of the instrument*, is in favour of a purchaser effectual during that fixed time, notwithstanding acts done by the donor of the power without the concurrence of the donee, and notwithstanding the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor. It should be observed that an authority given for sufficient consideration either by way of security or for the benefit of the grantee is of its own nature irrevocable (*Frith* v. *Frith*, [1906] A. C. 254).

Irrevocable powers of attorney.

Section 48.—Advantage may be taken of this section as regards powers of attorney for general management of estates or otherwise likely to subsist for a lengthened period. But there will be little or no use in depositing a power for a temporary purpose, *e.g.*, to execute a particular deed, as such a power will more properly be handed over to the person or persons entitled to the custody of the deed.

Deposit of original instruments creating power of attorney.

XII.—Construction and Effect of Deeds and other Instruments.

Use of word grant unnecessary.

Section 49.—This section seems inoperative, as the word *grant* never has been necessary for the conveyance of lands. But it is still generally used, and there can be little doubt that it will continue to be used for the purpose.

Conveyance by a person to himself, &c.

Section 50.—Previously to Lord St. Leonards' Act, 22 & 23 Vict. c. 35, neither real nor personal property could be assigned by a person directly to himself. The 21st section of that Act enabled a person to assign personal property then by law assignable, including chattels real, directly to himself and any other person or persons or corporation. But it was doubted whether the power extended to choses in action, for they are not assignable at law (*a*). The present section extends both to choses

(*a*) See, however, the Supreme Court of Judicature Act, 1873, s. 25, sub-s. 6, which enacts that:

Assignment of debts and choses in action.

"Any absolute assignment, by writing under the hand of the "assignor (not purporting to be by way of charge only), of any "debt or other legal chose in action, of which express notice in "writing shall have been given to the debtor, trustee, or other "person from whom the assignor would have been entitled to "receive or claim such debt or chose in action, shall be, and be "deemed to have been, effectual in law (subject to all equities "which would have been entitled to priority over the right of the "assignee if this Act had not passed), to pass and transfer the "legal right to such debt or chose in action from the date of such "notice, and all legal or other remedies for the same, and the "power to give a good discharge for the same, without the con-"currence of the assignor: Provided always, that if the debtor, "trustee, or other person liable in respect of such debt or chose in "action shall have had notice that such assignment is disputed by "the assignor or any one claiming under him, or of any other "opposing or conflicting claims to such debt or chose in action, he "shall be entitled, if he think fit, to call upon the several persons

in action and to freehold land. But, so long as the Statute of Uses remains unrepealed, there seems to be

" making claim thereto to interplead concerning the same, or he " may, if he think fit, pay the same into the High Court of Justice " under and in conformity with the provisions of the Acts for the " relief of trustees."

As to what is such an assignment, see *Brice* v. *Bannister*, 3 Q. B. D. 569; *Buck* v. *Robson*, *ib.* 686; *Ex parte Hall, In re Whiting*, 10 Ch. D. 615; *The British Waggon Co.* v. *Lea*, 5 Q. B. D. 149; *Walker* v. *Bradford Old Bank*, 12 Q. B. D. 511; *Harding* v. *Harding*, 17 Q. B. D. 442; *Tancred* v. *Delagoa Co.*, 23 Q. B. D. 239, finally deciding that an assignment of a mortgage debt on a sub-mortgage is within the section; *Durham* v. *Robertson*, [1898] 1 Q. B. 765, in which *Brice* v. *Bannister* was doubted, and *Tancred* v. *Delagoa Co.* approved; *Comfort* v. *Betts*, [1891] 1 Q. B. 737; *Fitzroy* v. *Cave*, [1905] W. N. 103, deciding that the section applies to an assignment upon trust; *Jones* v. *Humphreys*, [1902] 1 K. B. 10, where it was held that an assignment of an indefinite and unascertained amount was not within the section; *Hughes* v. *Pump, &c. Co.*, [1902] 2 K. B. 190; and *William Brandt's Sons & Co.* v. *Dunlop Rubber Co.*, [1904] 1 K. B. 387. As to whether an assignment of part of a debt comes within the section, see *Bowles* v. *Baker*, [1910] W. N. 24. The section does not make assignable contracts which were before incapable of assignment: *Tolhurst* v. *Associated Portland Cement Manufacturers*, [1902] 2 K. B. 660; [1903] A. C. 414; and see a full discussion of it in *Torkington* v. *Magee*, [1902] 2 K. B. 427. As to the equities by which an assignee is affected, see *English and Scottish Mercantile Investment Co., Ltd.* v. *Brunton*, [1892] 2 Q. B. 700. As to the effect of an assignment of future receipts, where the assignor afterwards becomes bankrupt, see *Ex parte Nichols*, 22 Ch. D. 782; *Ex parte Moss*, 14 Q. B. D. 310; *Re Davis & Co.*, 22 Q. B. D. 193; *Wilmot* v. *Alton*, [1897] 1 Q. B. 17; and see also the note as to assignments of after-acquired property to the Precedent of a Bill of Sale, *infra*. A contract to make advances creates no debt, and is therefore substantially unassignable: *Western Wagon and Property Co.* v. *West*, [1892] 1 Ch. 271. As to contracts to subscribe for debentures, however, see the Companies (Consolidation) Act, 1908, s. 105, and as to equitable assignments generally, *William Brandt's Sons & Co.* v. *Dunlop Rubber Co.*, [1905] A. C. 454.

As to policies of assurance, see 30 & 31 Vict. c. 144; Davidson's Prec. Conv. vol. ii. pt. i. 4th ed. p. 654, n.; and *Crossley* v. *City of Glasgow Life Assurance Co.*, 4 Ch. D. 421; *Spencer* v. *Clark*, 9 Ch. D.

no reason why the practice, hitherto necessary, and generally understood, of conveying to a stranger or to one of the other *cestuis que usent*, to the use of all the *cestuis que usent*, including the grantor or grantors, should not be followed: and it will be necessary, in some cases, to follow it, in order that the covenants (implied or otherwise) may run with the land. This section does not seem to authorise a conveyance to the conveying party or one of the conveying parties alone. But a conveyance of the former kind would be absurd and inoperative, and a conveyance of the latter kind would operate usually as a release by the other conveying party or parties.

A conveyance by a husband to his wife was absolutely void at common law (*Moyse* v. *Giles*, 2 Vern. 385), though in several cases an instrument, apparently intended to operate as a conveyance by a husband to his wife, has been treated as a valid declaration of trust (*Baddeley* v. *Baddeley*, 9 Ch. D. 113; *Fox* v. *Hawks*, 13 Ch. D. 822). The present section renders it unnecessary to consider whether the decisions in the cases referred to were in conformity with law (as to which, however, see *Re Breton's Estate*, 17 Ch. D. 416). As to the effect of the Married Women's Property Acts upon the general status of husband and wife, see *Re March, Mander* v. *Harris*, 24 Ch. D. 222; 27 Ch. D. 166; *Re Jupp*, 39 Ch. D. 148; *Thornley* v. *Thornley*, [1893] 2 Ch. 229; *Dunbar* v. *Dunbar*, [1909] W. N. 203.

Words of limitation in fee or in tail.

Section 51.—There seems to be no object in substituting the words "in fee simple" for the ordinary words of limitation of such an estate, the words proposed to be substituted being no less technical than those hitherto necessary. But it has long been usual in wills to limit

137; *Webster* v. *British Empire, &c. Co.*, 15 Ch. D. 169; *Curtius* v. *Caledonian Fire and Life Insurance Co.*, 19 Ch. D. 534.

estates "in tail," and "in tail male" by the use of those words instead of the words "heirs of the body" or "heirs male of the body" (as the case may be), and as regards such estates, the former words seem now adapted for general use in deeds also, not only in order to assimilate the form of deeds in this respect to that of wills, but also because such estates can be more neatly and concisely limited by the use of the statutory words, notably where tenancies in common in tail with cross remainders are created. If the section is relied on, care should be taken to use the actual words of limitation mentioned in it. See *Re Ethel, &c. Contract*, [1901] 1 Ch. 945, where a re-conveyance of a freehold to the use of the mortgagor "in fee" was held not to pass the legal estate.

Powers simply collateral.

Section 52.—A power simply collateral, *i.e.*, according to Lord St. Leonards (Sugden on Powers, 8th ed. p. 47), a power to a person not having any interest in the land, and to whom no estate is given, to dispose of or charge the estate in favour of some other person, could not before the Act be suspended or extinguished by any act of the donee (Sugden on Powers, p. 49; and see *Weller* v. *Ker*, L. R. 1 Sc. & D. 11, and *Re Dunne's Trusts*, 1 L. R. Ir. 516; 5 L. R. Ir. 76); and the section does not, it seems, apply to such a power if coupled with a trust or duty (*Re Eyre*, W. N. 1883, 153; 49 L. T. 259; *Saul* v. *Pattinson*, W. N. 1886, 67; 54 L. T. 670; *Re Somes*, [1896] 1 Ch. 250; *Re Weekes' Settlement*, [1897] 1 Ch. 289). The section is not confined (as the marginal note implies that it is) to powers simply collateral, but powers not simply collateral could be released before the Act (Sugden on Powers, pp. 82 *et seq.*, 89, 90; *Davies* v. *Huguenin*, 1 Hem. & Mil. 730; *Isaac* v. *Hughes*, L. R. 9 Eq. 191; *Re Radcliffe*, [1892] 1 Ch. 227; *Re Somes*, [1896] 1 Ch. 250 (which, as well as *Re Radcliffe*, relates to the validity of a release intended for the purpose of

enabling the fund to be applied for the benefit of the releasor); and compare *Palmer* v. *Locke*, 15 Ch. D. 294; *Shirley* v. *Fisher*, 47 L. T. 109). One of several donees of a joint power cannot, it appears, effectually release the right to join in the exercise of such power (*Burnaby* v. *Baillie*, 42 Ch. D. 282). In *Re Little, Harrison* v. *Harrison*, 40 Ch. D. 418, it was argued (but not decided) that the section extends to a married woman, and in *Re Chisholm's Settlement*, [1901] 2 Ch. 85, it has been actually so decided. In that case, a married woman had under her marriage settlement, dated in 1872, a life interest in personalty subject to a restraint on anticipation, with a power of appointment among her children, and it was held that notwithstanding the restraint, and by a deed unacknowledged, she could release the power by virtue of this section. It should be noticed that the powers of a tenant for life under the Settled Land Acts cannot be released. See the Act of 1882 (Appendix VII., *infra*), s. 50.

Disclaimer of powers.

Sect. 6 of the Conveyancing Act, 1882 (Appendix V., *infra*), enables a person to whom any power, whether coupled with an interest or not, is given to disclaim the power by deed. As to disclaimer generally, see Davidson's Prec. Conv. vol. v. pt. ii. 3rd ed. pp. 661 *et seq*.

Construction of supplemental or annexed deed.

Section 53.—This section seems practically inoperative. The validity and effect of deeds, expressed to be supplemental, or intended to be annexed to other instruments, has never been doubted, and annexed deeds were, before the Act, by no means uncommon. Neither a supplemental, nor an annexed deed, should be used where there is any probability that it will have to go into different custody from that of the deed to which it is supplemental or annexed; nor can either be deemed generally desirable, on account of the risk that the original deed may be lost, or be dissociated from the supplemental or annexed deed. But a supplemental

deed may be used with advantage, where both deeds are on record, as in the case of deeds enrolled in Chancery, or where, from their nature, there is no risk of their being lost or dissociated, as in the case of articles of a company and supplemental articles.

Receipt in deed sufficient.

SECTION 54.—No receipt has ever been necessary as between payer and payee, though neither the receipt in the deed, nor the receipt usually indorsed upon it, prevents the latter from showing in equity that the money was not paid (*Winter* v. *Lord Anson*, 1 S. & S. 434; on appeal, 3 Russ. 488; *Hawkins* v. *Gardiner*, 2 Sm. & G. 441); nor is the receipt clause, where not including the release formerly added, a bar at law to an action by the vendor for unpaid purchase-money (*Potts* v. *Nixon*, 5 Ir. Rep. C. L. 45), and in those respects the law does not seem to be altered by this section.

Receipt in deed or indorsed, evidence for subsequent purchaser.

SECTION 55.—Notwithstanding the rule adverted to in the last preceding observations, that neither a receipt in the deed, nor an indorsed receipt, is conclusive evidence of the payment, as between the parties, it has been considered that a purchaser finding an indorsed receipt was not bound to inquire further (*White* v. *Wakefield*, 7 Sim. 401; *Bickerton* v. *Walker*, 31 Ch. D. 151). But the absence of an indorsed receipt has (at any rate since the decision in *Kennedy* v. *Green*, 3 My. & K. 699, see also *Lyon* v. *Chaters*, 2 Kee. 521; *Greenslade* v. *Dare*, 20 Beav. 284; 18 Jur. 294) been treated as raising a presumption that the money was not paid. The present section abolishes this presumption, and it is therefore desirable that the practice of indorsing a receipt for purchase or mortgage-money should be discontinued where the deed is not to be delivered to the purchaser or mortgagee until the purchase or mortgage-money has been received, and that in any case where delivery will or may possibly precede such receipt, the receipt in the deed

should be omitted, and only the indorsed receipt used. A mere statement of the consideration, and that it proceeds from the grantee, is said not to be a receipt within the meaning of this section (*Renner* v. *Tolley*, W. N. 1893, 90). Its effect was considered and explained in *Lloyds Bank, Ltd.* v. *Bullock*, [1896] 2 Ch. 192.

Receipt in deed or indorsed, authority for payment to solicitor.

Section 56. This section does away with the necessity for the formal authority, which was usually given to the solicitor, to receive purchase and other money payable to his client, and without which such money could not be safely paid to any one but the client (Dart, V. & P. 7th ed. pp. 682 *et seq.*; *Ex parte Swinbanks, Re Shanks*, 11 Ch. D. 525; *Edwards* v. *Evans*, W. N. 1879, p. 171; *Gordon* v. *James*, 30 Ch. D. 249). But the section does not protect a payment to a solicitor not acting for the person to whom the money is expressed in the deed to be paid (*Day* v. *Woolwich Society*, 40 Ch. D. 491), although if the solicitor acting in fact for such person but fraudulently, produces the deed, the client may be estopped from denying his authority to receive the money (*King* v. *Smith*, [1900] 2 Ch. 425, where the expression "a solicitor" in the section is discussed by Farwell, J.). It being considered that a trustee could not give an effectual authority for the receipt of money payable to him (Dart, V. & P., *ubi supra*), the section was held not to extend the powers of trustees in this respect (*Re Bellamy and Metropolitan Board of Works*, 24 Ch. D. 387; *Re C. Flower, M.P., and Metropolitan Board of Works*, 27 Ch. D. 592; and see also sect. 8), but it was extended to trustees by the Trustee Act, 1888, s. 2, repealed and re-enacted by the Trustee Act, 1893 (Appendix XVI., *infra*), s. 17, which also enables a trustee to appoint a banker or solicitor to receive and give a discharge for policy monies by permitting the banker or solicitor to produce the policy with a receipt signed by the trustee. This last-mentioned section, it should be observed, does

not enable the payment of money to a person, or to the solicitor of a person, to whom the trustee has granted a general power of attorney (*Re Hetling and Merton's Contract,* [1893] 3 Ch. 269).

Sufficiency of forms in fourth schedule.

Section 57.—The forms in the schedule referred to do not substantially differ from those in the earlier editions of the present work, except so far as regards the alterations occasioned by the Act itself.

Covenants relating to land to be deemed to be made with the heirs and assigns, or executors, administrators, and assigns (as the case may require), of the covenantee.

Section 58.—The section only extends to covenants which *relate* to the land—that is (it is assumed), which touch and concern the land, within the meaning of *Spencer's Case,* 5 Rep. 16 (as to which, see the note to that case in 1 Smith, L. C., and Davidson's Prec. Conv. vol. i. 5th ed. pp. 88 *et seq.*, and *Forster* v. *Elvet,* [1908] 1 K. B. 629; [1909] A. C. 98), and creates no new rule for ascertaining whether the benefit of a covenant does or does not run with the land, though it abolishes (so far as regards covenants entered into on or after the 1st of January, 1882) any distinction which may previously have existed between the position of the assign of a covenantee, whose assigns are expressly mentioned, and that of the assign of a covenantee, whose assigns are not expressly mentioned.

In the Act the marginal notes of this and the following section appear to have been transposed.

Covenant to bind heirs.

Section 59.—Apart from this section the heirs of a covenantor or obligor are not bound unless expressly named in the deed, though the real estate of the covenantor or obligor could, under 3 & 4 Will. 4, c. 104, be administered by the Court for payment of his debts, whether on simple contract or on specialty. The effect of this section is to render the heirs of a covenantor or obligor, under a deed not mentioning his heirs, liable to an action by the covenantee or obligee, in the same manner as if heirs had been expressly mentioned. The

liability where heirs are expressly mentioned was created by the so-called Statute of Fraudulent Devises, 3 Will. & M. c. 14 (repealed and re-enacted with some alteration by the Debts Recovery Act, 1830, 11 Geo. 4 & 1 Will. 4, c. 47), as to the effect of which see *Coope* v. *Cresswell*, L. R. 2 Ch. 112, Davidson's Prec. Conv. vol. ii. pt. ii. 4th ed. p. 475 n.; *Re Atkinson*, [1908] 2 Ch. 307.

The express mention of heirs in covenants and obligations and other contracts under seal, having been rendered unnecessary by this section, together with that of executors and administrators (which never was necessary), has since been very generally discontinued. And see now the Land Transfer Act, 1897 (App. XVIII., *infra*), sects. 1 and 2.

The Bill, as sent down to the House of Commons, contained a clause defining the liabilities of married women in regard to their separate estate and otherwise under the Act. The clause was objected to in Committee, and abandoned to save the Bill, and the liabilities referred to were consequently left in uncertainty, which, however, seems to be removed by sect. 1 of the Married Women's Property Act, 1893 (Appendix XIII., *infra*), rendering every married woman liable upon her contracts to the extent of her separate estate in the same manner as if she were a *feme sole*.

Effect of covenant with two or more jointly.

Section 60.– This section applies only to covenants and contracts and obligations *under seal*, and where the covenantees or obligees and the persons to whom or for whose benefit the money is to be paid or the act done are the same. The rule at law has always been, that the benefit of a covenant unequivocally joint shall devolve accordingly, though, where the interests of the covenantees are several, then, even at law, the covenants, if not expressly joint, are treated as several (*Sorsbie* v. *Park*, 12 M. & W. 146; *Bradburne* v. *Botfield*, 14 M. & W. 559; Sheppard's Touchstone, by Preston, p. 166, and 1 Wms. Notes on Saunders, pp. 162 *et seq.* (*Eccleston*

v. *Clipsham*) 1 (a) and 2 (c), where on p. 168, in quoting Lord Campbell's judgment in *Haddon* v. *Ayres*, 1 Ell. & Bl. 118, 149, covenantors is misprinted for covenantees; and see also *White* v. *Tyndall*, 13 App. Cas. 263). The rule in equity, as regards covenants and obligations for the repayment of money lent, has been the other way (*Petty* v. *Styward*, Rep. in Ch. 57; 1 Eq. Ca. Abr. 290; Davidson's Prec. Conv. vol. ii. pt. ii. 4th ed. p. 50, and the note to *Lake* v. *Cradock*, in 1 White & Tudor, L. C.), and under sect. 25 (11) of the Supreme Court of Judicature Act, 1873, the latter rule was to prevail. The section reverses the equitable inference in regard to covenants and obligations for the repayment of money lent, and enables covenants, contracts, and obligations with several to be (for the most part) shortened, by the omission of the words implied by virtue of the section, but, regard being had to sub-sect. 3, it may sometimes be proper to state precisely how the benefit of the covenant, contract, or obligation is to devolve.

Effect of advance on a joint account.

Section 61.—In equity it had hitherto been assumed that money advanced by two or more persons belonged to them as tenants in common, and consequently that the survivors or survivor could not give a sufficient discharge for the entire sum (see the references in the preceding observations on sect. 60). The doctrine was productive of great inconvenience as money so advanced almost invariably belongs to the lenders on a joint account, and in most mortgages and transfers to several persons, a clause expressly stating that the money belonged to them on a joint account was inserted. The present section seems to render the insertion of such a clause unnecessary in mortgages and transfers—and probably also in covenants and undertakings generally for the payment of money to several persons, the word *obligation* extending, it is assumed, to covenants and contracts whether under seal or not. Its provisions are not conclusive upon the

persons interested in the money (*Re Jackson*, 34 Ch. D. 732), though no doubt a purchaser cannot go behind it (*Re Harman and Uxbridge and Rickmansworth Rail. Co.*, 24 Ch. D. 720), unless the facts are disclosed as in *Re Blaiberg and Abrahams*, [1899] 2 Ch. 340.

Grant of easements, &c., by way of use.

Section 62.—It has been thought that easements cannot be created by way of use; but in practice they have frequently been expressed to be so created, and no objection has been taken that the mode of creation was inefficacious (see Dart, V. & P. 7th ed. pp. 533, 534; Davidson's Prec. Conv. vol. ii. pt. i. 4th ed. pp. 263, 548 n.). And, as an instrument under seal clearly evincing the intention of the parties may operate as a grant of an easement (Gale on Easements, 8th ed. p. 80 (*a*)), there seems to be ground for holding that such a conveyance as that suggested in this section would (independently of the Statute of Uses) operate to create the intended easement.

Regard being had to the definition of conveyance in sect. 2 (v. , it would seem that a conveyance by appointment under a power will come within the present section, even though the power may have been created by an instrument executed before the commencement of the Act.

Provision for all the estate, &c.

Section 63.—The clause which this section is intended to supersede was intended and supposed to meet those cases in which the conveying party had a term of years, or some other interest in the property, distinct from his estate, as appearing in the deed, and which might be held not to pass except by virtue of the clause. The ordinary clause (which is followed in the section) had been shown

(*a*) So a man may claim a way by grant, as if A. grant that B. shall have a way through his close—which seems to differ in no material respect from the form of grant suggested in the section.

by the decisions in *Neame* v. *Moorsom*, L. R. 3 Eq. 91, and *Francis* v. *Minton*, L. R. 2 C. P. 543, to be ineffective for its intended purpose (see also as to tithes *Chapman* v. *Gatcombe*, 2 New Cases, 516), and to be, therefore, surplusage, and was frequently omitted (*a*). The section has consequently no substantial effect, except by encouraging the omission of a superfluous clause, unless it should be held that the principle of the decisions referred to is not applicable to it (see, however, *Thellusson* v. *Liddard*, [1900] 2 Ch. 635, where equitable interests were held to pass by virtue of the section; and also *Price* v. *John*, [1905] 1 Ch. 744). And where there is any real reason to think that the conveying party may have some interest beyond what appears in the deed, general words sufficient to convey such interest should be added (*b*).

It is assumed that the qualification in sub-sect. 2 will be sufficient to prevent the implication in sub-sect. 1, extending to conveyances which are within the interpretation of that word in sect. 2 (v.), but which are not intended to pass the whole estate of the conveying party, as for instance, to leases.

Construction of implied covenants.

Section 64.—It should be observed that this section is wider in its terms than the marginal note implies.

XIII.—Long Terms.

Enlargement of residue of long terms into fee simple.

Section 65.—The terms referred to in this section are frequent in the Southern and Western Counties, and some other parts of England, and have been created mostly between the commencement of the reign of Queen Eliza-

(*a*) It has not been inserted in any of the precedents in the 8th and subsequent editions of this work.

(*b*) A form for this purpose is given in Prec. IV., *infra*.

beth and the end of the 18th century. Some of them are mortgage terms of which the equities of redemption have been barred by foreclosure, or by the Statute of Limitation—others, terms created and sold to raise portions and other charges—and others, terms apparently created on sales, probably to avoid the trouble and expense of feoffments with livery of seisin, or the two deeds of a lease and release. The older deeds of creation have mostly perished, and the evidences of the deeds are the recitals of, or reference to, them in later existing deeds. Until the abolition of fines (3 & 4 Will. 4, c. 74) and of tortious conveyances (8 & 9 Vict. c. 106, s. 4), persons possessed of these terms occasionally acquired, or attempted to acquire, the fee simple by the tortious operation of a feoffment and fine, or of a feoffment alone, but the process (where a fine was used) was expensive, and in any case of doubtful efficacy (see Sanders on Uses, 5th ed. vol. ii. pp. 21 *et seq.*), and since the last-mentioned Act has become impossible. The existence of these terms is a great evil to the proprietors of them, because the lands comprised in them are mostly mixed with freehold lands, and frequently cannot be distinguished, and require to be assigned or bequeathed by separate operative parts of deeds and wills, and on intestacy are separated from the freehold estates to which they belong.

The present section appears to be generally sufficient to enable persons in whom such terms may be vested, or who are otherwise interested in them, to enlarge them into estates in fee simple, and to subject such estates in fee simple (including minerals) to the limitations, trusts, incumbrances, and equities of the terms (*a*).

It should be noticed that where land held for a term capable of enlargement under the section is vested in trustees upon trusts corresponding as far as possible with

(*a*) Several precedents of enlarging deeds under the section will be found *infra*.

the limitations of settled freehold land, and the term has been enlarged under the section, the legal estate in the land so held will, under sub-sect. 3, become vested in the trustees, who ought, under sub-sect. 4, to convey the land to the uses of the settlement.

What construction should be put upon the expression *rent having no money value* seems to be still doubtful. But it would seem that the test ought to be, not whether any rent is reserved in money, but whether the rent is such as would have any value to a purchaser, or (in other words) whether the reversion could be sold. (See *Re Chapman & Hobbs*, 29 Ch. D. 1007; *Blaiberg* v. *Reeves*, [1906] 2 Ch. 175.)

Sub-sect. 6 removes a difficulty as to working mines, which might otherwise arise when the term is not limited without impeachment of waste, or where it is uncertain whether the term is so limited. (See *Elias* v. *Snowdon Slate Quarries Co.*, 4 App. Cas. 454, for an instance of this.)

The section has been amended by sect. 11 of the Conveyancing Act, 1882 (Appendix V., *infra*), excluding from its operation terms liable to be determined by re-entry for conditions broken, and any term created by sub-demise out of a superior term itself incapable of being enlarged into a fee simple.

XIV.—Adoption of Act.

Section 66.—This section is important to solicitors, chiefly in connection with covenants for title (sect. 7), since a solicitor is responsible to his client for permitting him unknowingly to enter into improper covenants, or for not securing to him those to which he is entitled from the other party (Dart, V. & P. 7th ed. p. 566, citing as to the former responsibility *Stannard* v. *Ullathorne*, 10

Protection of solicitors and trustees adopting this Act.

Bing. 491 . There seems to be no reasonable doubt that the section effectually protects from all responsibility in any such respect a solicitor who, on any of the conveyances mentioned in the 7th section, secures to his client, or permits his client to enter into, the covenants or covenant capable of being implied under that section in the conveyance to which he is a party. And it may be thought that a solicitor relying on this section in regard to such covenants will be in a better position than if he should insert in the conveyance express covenants, since in the former case he would not, while in the latter case he would, be obliged to exercise a discretion as to the nature and extent of the covenants to be inserted.

XV.—Miscellaneous.

Regulations respecting notices.

Section 67.—There can be no doubt that this section is sufficiently wide in its terms to render unnecessary any special provisions as to notice in instruments incorporating any part of the Act. Notices are required or authorised by sects. 14, 20, and 45, q. v. As a general rule (it may be here observed) notices required by an Act of Parliament to be given need not be personally served, unless it be so expressly directed (*Ex parte Portingell*, [1892] 1 Q. B. 15).

Statutory declarations.

Section 68.—The cumbrous title of the Act referred to had always been stated at length in the concluding clause of declarations under the Act.

XVI.—Court—Procedure—Orders.

Regulations respecting payments

Section 69.—This section seems to require no special remark. The section referred to of the Appellate Juris-

diction Act, 1876, indicates only the mode in which rules are to be framed. As to sub-sect. 3, see *Re Lillwall's Settlement Trusts*, W. N. 1882, 6; 30 W. R. 243. into Court and other applications.

Section 70.—This section appears to render Orders of Court made before or on or after the 1st January, 1882, and not then impeached, absolutely conclusive (as the marginal note implies (*a*)), as against purchasers (defined in sect. 2). It has been said (*b*) that the purchaser is still obliged to ascertain whether all persons in existence who ought to be parties to the action or other proceeding appear to be parties, or to be otherwise bound, since if any person in existence be not a party or otherwise bound, it is not a question of jurisdiction, concurrence, consent, service, or notice, but simply that his interest is not affected by the action or other proceeding. And such appears to be the result of the decision in *Jones* v. *Barnett*, [1900] 1 Ch. 370, where a purchaser was held not to be protected by an order of the Court made on the assumption that the Court was dealing with property belonging to A. when in fact the property belonged to B., who was not a party to the proceedings and not bound by them. Cp. also *Re Hambrough's Estate*, [1909] 2 Ch. 620. For cases to which the section applies, see *Re Hall Dare's Contract*, 21 Ch. D. 41; *Mostyn* v. *Mostyn*, [1893] 3 Ch. 376, commented on in *Jones* v. *Barnett*, *ubi supra*, and *Re Harrowby & Paine's Contract*, W. N. 1902, 137. Orders of Court conclusive.

(*a*) It was said by Jessel, M. R., in *In re Venour's Settled Estates*, *Venour* v. *Sellon*, 2 Ch. D. 522, that marginal notes now are part of an Act, and may be looked at to assist its construction, but the dictum appears to have been erroneous, and is corrected in *Sutton* v. *Sutton*, 22 Ch. D. 511; see also *Att.-Gen.* v. *Great Eastern Rail. Co.*, 11 Ch. D. 460, 461, 464, affirmed in D. P., 5 App. Cas. 473, without reference to the question as to the effect of marginal notes. The title of an Act is part of the Act: *Fielding* v. *Morley Corporation*, [1899] 1 Ch. 1.

(*b*) By the late Mr. Wolstenholme.

XVII.—Repeals.

Repeal of enactments in Part III. of second Schedule;

Section 71.—The enactments referred to are Lord Brougham's Act of 1845 (*a*), which had been practically a dead letter, and those parts of Lord Cranworth's Act which relate to mortgages and to trustees and executors.

restriction on all repeals.

The restriction imposed by sect. 2 on repeals applies not only to the enactments mentioned in the section, but to the other enactments repealed by the Act, and there seems no reason to doubt that the repealed Acts continue in force so far as they have been imported into any deed or Act before the 1st January, 1882—thus a mortgagee under such a deed incorporating the power of sale in Lord Cranworth's Act may exercise such power notwithstanding the repeal of Part II. of that Act (*Re Solomon & Meagher's Contract*, 40 Ch. D. 508). See also *Re Boucherett*, [1908] 1 Ch. 180.

The provision referred to relating to sect. 40 of the Settled Estates Act, 1877, is contained in sect. 70 of the present Act.

XVIII.—Ireland.

Section 72 seems to require no remark.

Modifications respecting Ireland.

Death of bare trustee intestate, &c., 37 & 38 Vict. c. 78.

Section 73.—The sections referred to of the Vendor and Purchaser Act, 1874 (Appendix II., *infra*), were repealed as to England by the Land Transfer Act, 1875, ss. 48 and 129.

(*a*) Mentioned *supra*, p. 25, n. (*a*).

Observations

UPON

COMPULSORY REGISTRATION OF TITLE AND DEALINGS WITH REGISTERED LAND AND CHARGES UNDER

THE LAND TRANSFER ACTS, 1875 & 1897.

Power to make registration compulsory on sale.

By sect. 20 (1) of the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), it is enacted that "Her Majesty the Queen may by Order in Council declare as regards any county or part of a county mentioned or defined in the Order that on and after a day specified in the Order registration of title to land is to be compulsory on sale, and thereupon a person shall not, *under any conveyance on sale* executed on or after the day so specified, *acquire the legal estate* in any freehold land in that county, or part of a county, unless or until he is registered as proprietor of the land." The expression "conveyance on sale" is defined (sub-sect. 2) as meaning an instrument executed on sale by virtue whereof there is conferred or completed a title under which an application for registration as first proprietor of land may be made under the Land Transfer Act, 1875 (38 & 39 Vict. c. 87: see sect. 5).

Order in Council.

By an Order in Council dated the 18th July, 1898, made pursuant to the above-mentioned section of the Act of 1897, registration of title was made compulsory on sale in the several portions of the county of London mentioned in the first column of the Schedule to the

Order on and after the respective days mentioned in the second column, the schedule being as follows:—

Portions of the County.	Days on and after which Registration of Title to Land is to be compulsory on Sale.
The parishes of Hampstead, Saint Pancras, Saint Marylebone, and Saint George's, Hanover Square.	1st November, 1898.
The parishes of Shoreditch, Bethnal Green, Mile End Old Town, Wapping, Saint George's-in-the-East, Shadwell, Ratcliff, Limehouse, Bow, Bromley, and Poplar.	1st March, 1899.
The remainder of the county (not including the city of London) north of the centre line of the River Thames, except North Woolwich.	1st October, 1899.
The remainder of the county, not including the city of London.	1st January, 1900.
The city of London	1st July, 1900.

By an Order in Council of the 20th October, 1898, it was declared that the above-mentioned Order of the 18th July, 1898, should be read and take effect as if instead of the words "first of November, 1898," the words "first of January, 1899," had been inserted in the Schedule thereto.

By a like order of the 28th November, 1899, it was declared that the Order of the 18th July, 1898, should as regards the under-mentioned portions of the county be read and take effect as if the Schedule thereto had been expressed as follows:—

Portions of the County.	Days on and after which Registration of Title to Land is to be compulsory on Sale.
The parishes of Christ Church Southwark, Saint George the Martyr, Camberwell, Horsleydown, Lambeth, Bermondsey, Newington, Rotherhithe, Saint Olave and Saint Thomas, Saint Saviour, and the detached part of the parish of Streatham situate between the parishes of Lambeth and Camberwell.	1st January, 1900.
The parishes of Battersea, Clapham, Putney, Tooting Graveney, Wandsworth, and the remainder of the parish of Streatham.	1st May, 1900.
The remainder of the county, except the city of London.	1st November, 1900.
The city of London	1st May, 1901.

And by the effect of subsequent Orders of the 9th March, 1901, 10th December, 1901, and 6th March, 1902, the operation of the Order of the 18th July, 1898, was further postponed as regards the City of London to the 1st July, 1902.

No further Order in Council can be made under sect. 20 of the Act of 1897 except as to a county or part of a county signifying by a resolution of its county council its desire that registration of title shall be compulsorily applied to it, and in any case no further Order was to be made for three years from the date of the Order of the 18th July, 1898 (Act of 1897, sect. 20 (8)).

Application to leaseholds.

The above-mentioned section of the Act of 1897 applies in terms to freehold land only. But sect. 22, sub-sect. 6, of the same Act authorised provision to be made by general rules under sect. 111 of the Act of 1875 (which gives to all such rules the force of an Act of Parliament) "for" (among other purposes) "applying to the grant of leases and dealings with leasehold land the provisions of this Act with respect to compulsory registration"; and by the Land Transfer Rules, 1903, dated the 18th December, 1903 (which came into operation on the 1st January, 1904, and by which the Land Transfer Rules of 1898, June, 1899, and February, 1903, are rescinded), the operation of an Order in Council made under sub-sect. 1 of sect. 20 of the Act of 1897 is extended to sales of leasehold as well as of freehold land, and to grants of leases and under-leases (rule 68); and it is provided by rule 69 that "the effect of an Order so made shall be that as regards land in the county or part of a county comprised in the Order an assignment on sale of a lease or under-lease having at least forty years to run or two lives yet to fall in, and a grant of a lease or under-lease for a term of forty years or more or for two or more lives, executed after the day specified in the Order and capable of registration, shall operate only as an agreement, and shall not pass any legal estate to the assignee or lessee

unless or until he is registered as proprietor of the lease or under-lease," except in the case of assignees or lessees being trustees of a settlement for the purposes of the Settled Land Acts, 1882 to 1890, where the rule is not to prevent the legal estate from passing if the tenant for life is registered as proprietor within a month from the date of the assignment or lease or within such further time as the registrar shall allow.

The expressions " assignment on sale " and " grant of a lease or under-lease " in rule 69 have a meaning corresponding to that given to the expression " conveyance on sale " by sect. 20 (2) of the Act of 1897 (rule 70). The procedure with regard to registration of title to leasehold is assimilated to that in the case of freehold, various portions of the Act of 1875 being repealed for this purpose by the rules (see rule 67).

By the Land Transfer Rules, 1907 (which came into operation on the 1st day of October, 1907), rules 9, 250, 269, and 270 of the rules of 1903 have been annulled, and new rules, numbered 250, 259A, 259B, 269, 269A, 269B, 269C, 269D, and 270 have been substituted or inserted, and some further alterations and modifications of the earlier rules and forms consequential on the institution of a series of maps, to be called the Land Registry General Map, have been made.

By the Land Transfer Rules, 1908 (which came into operation on the 1st January, 1909), rules 18 to 50 inclusive of the Rules of 1903, and Forms 1 to 5 inclusive and Form 70 in the First Schedule to those Rules have been abrogated and new rules 18 to 48 and Forms 1 to 4 in the First Schedule to the Rules of 1908 have been substituted, and some other slight alterations in the earlier Rules have been made. Except where otherwise stated the references below to rules are to those of 1903.

How far compulsory provisions extend.

It is to be observed that the compulsory provisions of the Act of 1897 apply only in the case of *sales* of freeholds and of *assignments* on sale or *grants* of leasehold

interests of the nature mentioned in rule 69. They have no application in other cases, *e.g.*, on a voluntary conveyance or assignment, a mortgage, or a devolution on death. It is also expressly enacted by sect. 24 (1) of the Act of 1897 that "nothing in this Act shall render compulsory the registration of the title to an incorporeal hereditament, or to mines or minerals apart from the surface, or to a lease having less than forty years to run or two lives yet to fall in, or to an undivided share in land, or to freeholds intermixed and indistinguishable from lands of other tenure, or to corporeal hereditaments parcel of a manor, and included in a sale of the manor as such." And leasehold land held under a lease containing an absolute prohibition against alienation is excluded from registration by sect. 11 of the Act of 1875. Moreover, there is no compulsion upon a proprietor to register more than a "possessory title," although he may, if he chooses and his title is satisfactory to the registrar, be registered with an "absolute" or "qualified" title (Act of 1897, sect. 20 (3), and see also Rule 39 of 1908; and for the meaning of these expressions, see the Act of 1875, sects. 7, 8 and 9). It should be noticed, too, that the word "compulsory," as used in sect. 20 (1) of the Act of 1897, is inaccurate and somewhat misleading. There is no real compulsion to register, the penalty for non-registration being merely loss of the legal estate, which may be outstanding. Moreover, such indirect compulsion as exists is limited to the first registration; for after the land has once been registered, the legal estate will pass on a subsequent conveyance on sale without registration (see *Capital and Counties Bank, Ltd.* v. *Rhodes*, [1903] 1 Ch. 631).

It is proposed in the following observations merely to give such a general outline of the scope of the Acts and the procedure under the rules as will be of practical assistance to solicitors in placing land upon the register in districts where compulsory registration of title is for

the time being in force, and in carrying out subsequent transactions in relation to such land.

The Register. The rules provide (Part I.) that the Register is to consist of three portions, called respectively the Property Register, the Proprietorship Register, and the Charges Register (rule 2 . The Property Register is to contain (rule 3) the description of the land, notes relating to the ownership of the mines and minerals, and such liabilities, rights, and interests as are not incumbrances within the meaning of the Acts (see sect. 18 of the Act of 1875, as amended by the first schedule to the Act of 1897), and to easements and other like matters. (Rules 2 and 3 have been slightly modified by the Rules of 1907: see the schedule thereto.) The Proprietorship Register is to show the nature of the title registered, who is the proprietor, and the cautions, inhibitions, and restrictions affecting his right of disposition (rule 6). The Charges Register is to disclose the incumbrances to which the registered land is subject, and any rights adversely affecting it (rule 7).

I.—First Registration of Freehold Land.

Who may apply for registration. From the definition of the expression "conveyance on sale" used in sect. 20 (1) of the Act of 1897 (see subsect. 2 of that section, and sect. 5 of the Act of 1875), it would appear that a person who has entered into a contract of purchase, but has not taken a conveyance, may apply for registration. The effect of registration under such circumstances is, however, not clear. It would apparently leave the legal estate outstanding in the vendor (assuming him to possess it), and in other respects would be attended by great inconvenience. It is therefore assumed that a purchaser will usually take a conveyance before applying for registration. Where, however, considerable time is likely to elapse between

the contract and completion, or for any other reason it may seem desirable, the purchaser should lodge with the registrar a caution under sect. 60 of the Act of 1875 (see rules 88 to 91, and forms 14 and 15 in the first schedule to the rules), which will prevent registration being effected on the application of any other person without the purchaser's knowledge.

It should be further observed that under the provisions of sect. 5 of the Act of 1875, no person is competent to apply for registration who is not either under contract to buy (sub-sect. 1), or entitled to (sub-sect. 2), or capable of disposing of (sub-sect. 3), *for his own benefit*, an estate in fee simple in land, whether subject or not to incumbrances. Sub-sect. 3, however, of sect. 7 implies that a person may, under some circumstances, apply for and obtain registration who is not entitled for his own benefit. And sect. 68, though apparently contemplating only sales by trustees through the medium of the registry, does in terms authorise every person holding land on trust for sale, and every trustee, mortgagee, or other person having a power of selling land (which would include a tenant for life), to apply for registration, whether an immediate sale is intended or not. At the land registry the section is understood to confer this authority. And it must be assumed that the Order in Council of the 18th July, 1898, above referred to, applies to persons who purchase otherwise than for their own benefit, or at least to persons who, though not purchasing for their own benefit, will hold the land after completion of the purchase on trust for or with a power of sale.

A.—*Possessory Title.*

Registration with possessory title.

Assuming that the purchaser has taken a conveyance and desires to be registered with a possessory title (Act of 1875, sect. 8), he will deliver at the registry an application in accordance with form 1 in the first schedule to

the Rules of 1908 accompanied by such documents as are referred to in rule 19 of 1908, and sufficient particulars, by plan or otherwise, to enable the land to be fully identified on the ordnance map or on the Land Registry General Map, instituted under the Rules of 1907. When the application is for registration in the name of a nominee, or is made by a purchaser, the written consent of the nominee or of the vendor or his solicitor is to be delivered with the application (rule 21 of 1908, in which *purchaser* is understood to mean a purchaser who has not taken a conveyance). The ordnance map is the basis of all registered descriptions of land (rule 269 of 1907). It is conceived that it will not generally be desirable to state in the application whether the land is subject to any, or, if any, what incumbrances, or liabilities, rights, or interests of the nature mentioned in sect. 18 of the Act of 1875 (as amended by the first schedule to the Act of 1897), inasmuch as the title will not be investigated by the registrar; but any incumbrances, conditions and other burdens to which the land may be subject are to be entered in the register in accordance with the title produced (rule 43 of 1908). The applicant must produce his documents of title to be marked in accordance with sect. 72 of the Act of 1875, for the purpose of giving notice of the fact of registration to persons subsequently dealing with the land; and the registrar has power to compel the production of such documents where they are in the possession of other persons, and the applicant is entitled to the production of them (see sect. 71 of the Act of 1875). The registrar, however, is empowered by rules 45 and 46 of 1908 (founded upon the amendment of sect. 72 of the Act of 1875, made by the Act of 1897, first schedule) to relax this provision where the deeds are numerous or cannot be produced. Upon completion of the registration a land certificate in form 66 in the first schedule to the rules is delivered to the proprietor, or (at his option) may be deposited without cost to him, in the

registry (rule 47 of 1908, Act of 1897, sect. 8 (4) (iv.)). Registration with a possessory title is the simplest, easiest, and cheapest mode of registration, and it is apprehended that for the present, at any rate, purchasers will in almost all cases be advised to apply to be registered in the first instance with a title of this description. *Primâ facie* evidence of the applicant's right to apply for registration as first proprietor is all that is required (rule 37 of 1908). Provision is made (rule 39 of 1908) for the easy conversion of a possessory into an absolute title where the documents produced on the application for registration with a possessory title are sufficient to enable registration to be made with absolute title.

B.—*Absolute Title.*

Registration with absolute title.

If the purchaser desires to register with an absolute title (Act of 1875, sect. 7), he will deliver at the registry an application in accordance with form 1 in the first Schedule to the Rules of 1908 accompanied by the documents referred to in rules 19 and 21 of 1908 as the circumstances require. Advertisements of the application are to be inserted in the *London Gazette* and other newspapers (rules 28 and 29 of 1908), but provision is made for dispensing with such advertisements in certain cases (rule 30 of 1908). The title will be examined by or under the superintendence of the registrar, who may refer the whole or part of the examination to an Examiner of Title (see rule 24 of 1908 and rule 313). When either (1) the land has been sold or purchased under an order of the Court, or (2) has been registered with a possessory or qualified title for six years, the first proprietor having been a purchaser on sale, or (3) the title has been fully investigated on a transaction for value, the examination may be modified in such manner as the registrar may think fit (rule 27 of 1908, and see sect. 17 of the Act of 1875). All objections forthcoming in answer to the advertise-

ments or otherwise are to be heard and disposed of (rules 31 to 33 of 1908). A statutory declaration may be required from the applicant and his solicitor that all instruments and facts affecting the title have been disclosed (sect. 70 of the Act of 1875; rule 44 of 1908), and the documents of title are to be marked as provided by sect. 72 of the Act of 1875. Upon the completion of the registration, the land certificate (form 66) will be delivered to the proprietor, or at his option deposited in the registry (rule 47 of 1908) and the documents of title returned to him (*ib.*). Upon an application to register with an absolute title, it is the duty of the registrar to make inquiry as to whether there is any liability to succession duty, or estate duty, and if any exist to note the fact in the Charges Register (sect. 13 of the Act of 1897; rule 208, and form 55), and also to note on the register the facts relating to the ownership of the mines and minerals, or the existence of liabilities and rights in relation thereto (Act of 1875, sect. 18 (4) and (5), as amended by the Act of 1897: see first schedule, and rules 1 (5), 213 and 214). And, generally, an entry is to be made in the register of all incumbrances, and all liabilities, rights, and interests of the nature mentioned in sect. 18 of the Act of 1875, as amended by the first schedule to the Act of 1897, which either appear on the abstract or are disclosed by the applicant, or otherwise ascertained in the course of the investigation of the title (rule 26 of 1908), the intention being that as far as possible the exact condition of the title shall appear on the register, which, however, is not to be conclusive as to matters which are not incumbrances (Act of 1897, sect. 16 (1)). It may further be mentioned that under sect. 17 of the Act of 1875, a title appearing on examination to be a good holding title, though open to objection, may be approved and registered as absolute.

C.—*Qualified Title.*

Registration with qualified title.

There is no power under the Acts of 1875 and 1897, or the rules, to apply for registration with a qualified title. But where application is made for registration with a possessory or absolute title, and upon the examination of the title it appears to the registrar that a qualified title only ought to be entered on the register, the applicant may, if he desires, have such qualified title registered (Act of 1875, sect. 9, rule 36 of 1908). The registrar is to frame the proper entries for the register with the approval of the applicant (rule 36 of 1908); and it is apprehended that they will be the same as in the case of registration with absolute title, with the exception that the estates, rights, and interests excluded from the effect of the registration will be particularly described (see sect. 9 of the Act of 1875).

II.—First Registration of Leasehold Land.

Registration of leaseholds.

The procedure will be the same, in general, as in the case of freehold land, application being made in accordance with form 2 in the first schedule to the Rules of 1908. The application must be accompanied by the lease when in the possession or under the control of the applicant, and in other cases by a copy or abstract or other sufficient evidence of its contents (rule 51). Application may be made for registration with absolute title, with good leasehold title, or with possessory title (rule 52); in order to registration with an absolute title, the title not only to the leasehold, but also to the freehold, and any existing intermediate leasehold, must be approved by the registrar, and when registration with a good leasehold title is required, the title to the leasehold interest must

be so approved (rule 53 of 1908). The effect of registration of leasehold land with absolute, good leasehold, and possessory title respectively, is stated in rules 55, 56, and 57. A qualified title may be registered (rule 58 as modified by the Rules of 1908). Where the lease affects land already registered, notice must be given to the registered proprietor of the land, or of the superior lease out of which the lease is granted, with a view to the lease being noted against the title to the freehold or superior lease (rule 63). Terms created for mortgage purposes are outside the scope of the Acts (sect. 11 of the Act of 1875, as amended by the Act of 1897, first schedule).

III.—First Registration Generally.

A few points in connection with first registration require special mention:—

Registration of settled land.

(1.) Upon a purchase by a tenant for life under a real property settlement in exercise of his power under the settlement or the Settled Land Act, 1882, or by trustees of such a settlement in exercise of a power to invest in land, the application for registration may (at the option of the tenant for life) be made by, and the registration be in the names of either (1) the tenant for life, (2) the trustees of the settlement having powers of sale (if any), or (3) the persons (if any) in whom there is vested an overriding power of appointment of the fee simple (sect. 6 (1) of the Act of 1897). The expression "tenant for life" in sect. 6, sub-sect. 1 of the Act of 1897, has (sub-sect. 10) the same meaning as in the Settled Land Acts, 1882 to 1890. It has been considered that a person having the powers of a tenant for life within the meaning of those Acts must be taken to be included under the expression "tenant for life" in the Act of 1897; but probably the registration of such a person will be effected

under sect. 68 of the Act of 1875. There seems to be some doubt whether a person nominated by a settlement trustee for the purposes of the Settled Land Acts, and having, therefore, under sect. 60 of the Act of 1882, a power of sale where the tenant for life is an infant, but not an express power of sale, can be registered under sect. 6 (1) of the Act of 1897, or otherwise. Where the settlement is by way of trust for sale under sect. 63 of the Settled Land Act, 1882, it would appear that the trustees are the proper persons to be registered (see sect. 68 of the Act of 1875). In each case the interests of the beneficiaries under the settlement are to be protected by the entry in the register of restrictions for the purpose of preventing the registered proprietor from dealing with the land except with such consents and in the manner required or authorised by the settlement or the Settled Land Acts (sect. 6 (2) of the Act of 1897; and see rules 79 to 81). Forms 6 to 12 in the first schedule to the rules contain restrictions which may be adapted to the circumstances of each case. Where an application is made for registration with possessory title, the proper restriction is to be left with the application, or sufficient information must be furnished to the registrar to enable him to frame it (rule 79); in other cases the registrar, in conjunction with the trustees of the settlement (if any), will frame the proper entry. A settlement, or a copy or abstract of it, may be filed in the registry (rule 82).

It may be added that under sect. 83 (3) of the Act of 1875, as amended by the Act of 1897 (first schedule), an entry may be made on the register on the occasion of the registry of two or more persons as joint proprietors, to the effect that when the number of such proprietors is reduced below a specified number no registered disposition shall be made except under an order of the Court or of the registrar after inquiry into the title. And the registrar is to make such an entry in the prescribed form (form 57), where the instrument by virtue of which

the joint proprietors are registered shows an intention that the survivor shall not have power to dispose of the land, or where for any special reason such an entry seems to the registrar desirable (rule 224). The entry may be made at any time with the consent of the joint proprietors. This provision affords a means of additional protection to *cestuis que trust* where trust estates are registered in the names of trustees.

Incumbrances prior to registration.

(2.) Where there is an incumbrance upon the land at the time of its first registration, the owner of the incumbrance may if he chooses, either then, or subsequently with notice to the proprietor of the land, be registered as proprietor of the incumbrance, in which case the incumbrance may afterwards be dealt with as if it had originally been created by a registered charge (rules 175 to 177); but if there are more than one of such incumbrances, and some of them only are registered, their relative priorities will not be affected (rule 175). If such an incumbrance is not registered, notice of it will, of course, appear in the register, at any rate in the case of an absolute title.

Disposition of land between purchase and registration.

(3.) Where subsequently to the purchase, but before registration, the purchaser desires to dispose of the land by way of mortgage, rule 96 provides that he may do so in the manner and subject to the conditions which would be applicable if he were in fact the registered proprietor, and that a charge so made shall, when completed by registration, but subject to any prior rights obtained by registration under the Acts and rules, have the same effect as if the person making it were registered as proprietor. But a charge is not to be accepted for registration until the application has been made for registration of the land, and the registration of the charge is to be annulled if the application for registration of the land is subsequently refused or withdrawn or abandoned. The effect of this rule is that a purchaser may, subject as is mentioned in

the rule, pass the legal estate to a mortgagee notwithstanding sect. 20 (1) of the Act of 1897.

Special hereditaments.

(4.) The Acts and rules contain various provisions as to the registration of *special* hereditaments, *e.g.*, Crown lands (Act of 1875, sect. 65), manors, advowsons, rents, tithes, and other incorporeal hereditaments, mines and minerals severed from the land, cellars, flats, and similar hereditaments, and undivided shares in land (Act of 1875, sect. 82, and rules 71 to 77). The registration of land held for charitable uses is dealt with by rules 83 to 86.

Title by possession.

(5.) The Act of 1897 (sect. 12) enacts that a title shall not be acquired by length of possession as against the registered proprietor, and that such proprietor may at any time make an entry or bring an action to recover possession; but a person who would but for the Acts have obtained a title by possession to registered land may apply for rectification of the register under sect. 95 of the Act of 1875.

Land situate in register counties.

(6.) Land situate within the jurisdiction of a local registry becomes exempt from such jurisdiction upon being registered under the Acts (Act of 1875, sect. 127); but the exemption does not extend to estates and interests excepted from the effect of registration under a possessory or qualified title, or to an unregistered reversion on a registered leasehold title, or to dealings with incumbrances created prior to the registration of the land (Act of 1897, first schedule), which accordingly will continue to require registration in the local registry.

IV.—Dealings with Registered Land.

Forms of instruments for registration.

The rules prescribe various forms of instruments of transfer and charge (see the first schedule); and it is apprehended that such instruments will be executed in

Necessity in many cases for contemporaneous unregistered instruments.

the prescribed forms upon sales and mortgages of registered land by the registered proprietor. As, however, the prescribed forms do not provide for a great variety of matters commonly incident to transactions of this description, it is clear that, in all but the simplest cases, contemporaneous unregistered instruments will be necessary. And even in the simplest cases it will be prudent for various reasons to have such an instrument. Thus, a transfer of freehold land in the prescribed form would not, until completed by registration, pass more than a life estate; and, as there is some doubt with respect to the position of the transferee in the interval between delivery of the transfer at the registry (rules 111 and 112) and completion of the registration, a contemporaneous assurance passing the fee will be desirable to neutralise the effect of notice during that interval of previous unregistered dealings (sect. 49 of the Act of 1875). Again, a charge in the prescribed form does not pass the legal estate to the mortgagee or place him in as advantageous a position as is usually desired. It is considered that, for the present at any rate, these contemporaneous unregistered instruments ought to be, and will be, assurances precisely or nearly the same as those which would have been executed if the land had not been registered, but to be followed of course by instruments in the prescribed forms (*a*). It may be observed, on this point, that the forms for use in the registry may be obtained free of charge (rule 331); and that where instruments not

(*a*) The Act is discussed with reference to the extent of its compulsory nature and the effect of unregistered instruments in *Capital and Counties Bank, Ltd.* v. *Rhodes*, [1903] 1 Ch. 631, where it is pointed out that registered land may be dealt with off the register as freely and effectually, as regards the legal estate and otherwise, as if it were not registered, subject only to the risk of the exercise by the registered proprietor of the statutory powers of disposition, which may be guarded against, where necessary, by notice on the register or a caution.

intended to be registered are properly stamped, and an instrument of transfer or charge is executed solely for the purpose of carrying out on the register the transaction effected by the unregistered instrument, the registered instrument is to bear no stamp duty (rule 123). Moreover, it is prescribed (see rules 97 and 98) that the forms are to be followed as closely as the circumstances will allow, and that no recitals or provisions not authorised by the rules or the notes to the forms are to be inserted; and the registrar has a general control over the form and contents of instruments intended for registration (rules 98 and 100). It is also worthy of mention that the forms do not contemplate the implied covenants for title under the Conveyancing and Law of Property Act, 1881; these covenants may be introduced (see rule 99), but no reference to them is to be entered in the register (*ib.*). Neither do they appear to contemplate any acknowledgment by a vendor or mortgagor of the receipt of the purchase or mortgage money (see forms 20 and 44), or any acknowledgment or undertaking as to title deeds. And it is provided (rule 119) that instruments on which entries in the register are founded are to be retained at the registry. It is to be observed further that there are many classes of instruments for which the Acts and rules do not provide at all, such, for instance, as leases, settlements, wills, and disentailing assurances. The evidence of title which may be required by a purchaser of registered land is specified in sect. 16 of the Act of 1897, and it would seem that on a sale of registered land no special conditions will, as a general rule, be necessary, except as to the title subsisting at the first registration, where such registration is of a possessory title only.

Title on sale of registered land.

A.—*Transfers.*

Forms 20 and 21 are the appropriate forms for use on ordinary sales of freehold land; the requisite variations

Forms of transfer.

where mines and minerals are dealt with or referred to appearing from forms 28 to 33.

Forms 22 to 27 are prescribed pursuant to sect. 6 (3) of the Act of 1897, and are for use in the case of a transfer to the uses of a settlement, either on a purchase with capital moneys (forms 25 to 27), or on a settlement where the existing proprietor on the register is to be the tenant for life, or where he wishes the trustees of the settlement, or persons having an overriding power of appointment, to be registered in his place (forms 22 and 23). These forms must be read in conjunction with sect. 6 (1) and (2) of the Act of 1897. The proper restrictions are to be added (see sect. 6 (2) and (3) of the Act of 1897, rule 81, and forms 6 to 12).

The form for use on a sale by a mortgagor and mortgagee is form 50 (rule 182); on a sale by a mortgagee under his power of sale, form 34 (rule 137); and on a sale of leaseholds, form 35 (rule 138). On a conveyance to a company or corporation, the appropriate form is form 36, a reference to the licence in mortmain or statute enabling the corporation to acquire or hold the land being required (see rule 144); and on a conveyance for charitable uses form 37, a reference to the statute or other authority under which the transfer is made being requisite (see rule 145). And where any right of pre-emption, or reverter, or restriction on alienation exists in either of these cases, notice of it is to be entered (rule 146). A transfer of land in consideration of a rent may be made in any form legally sufficient for the purpose of which the registrar may approve. The transferee will be registered as the proprietor of the land, and the rent entered in the Charges Register as an incumbrance (rule 130). Where land is transferred to which restrictive conditions have been or are to be annexed under sect. 84 of the Act of 1875, as, *e.g.*, on a building scheme, form 41 is prescribed; and on an exchange or partition, forms 42 and 43 respectively (see rules 154 to 156). Where the right to

transfer becomes vested in some other person than the registered proprietor by the operation of a statute or statutory power (*e.g.*, under the Lands Clauses Act), or an order of the Court, and the registered proprietor refuses to transfer, or there is difficulty in obtaining a transfer by him, the registrar is empowered by rule 151 to correct the register. This rule will probably apply where a vesting declaration has been made in an appointment of new trustees. For the effect of a transfer for valuable consideration of freeholds, registered with absolute, qualified, and possessory titles respectively, see the Act of 1875, sects. 30, 31, and 32; and where the transfer is voluntary, sect. 33. For the effect in the case of leaseholds, see rules 140 to 142, and the Act of 1875, sects. 35 and 38.

B.—*Charges.*

Forms of charge.

On a charge by the registered proprietor, forms 44 to 46 are to be used (rules 158 and 160). An exception is made as regards mortgages to building societies, which are entitled to registration if made in accordance with the rules of the society (sect. 9 (3) of the Act of 1897). On a transfer of a charge form 49, and on a reconveyance or discharge form 48 is prescribed. *Primâ facie* registered charges rank as between themselves in the order of entry on the register, and not of creation (Act of 1875, sect. 28). Where the proprietor of the charge has not the usual rights and remedies of a mortgagee (see the Act of 1875, sects. 23 to 27, and the Act of 1897, sect. 9 (2)), the registered instrument will negative or modify the implied covenants or provisions (rule 159, and see form 44). And where a person obtains a charge which has priority by statute over earlier charges on the same land, he must register it with an entry in the register of a claim to priority (rule 172). The registered proprietor of a charge or incumbrance may sub-charge the same in the same manner as a registered proprietor of land can charge the

land (see rule 178). A certificate of charge is to be issued to a registered proprietor of a charge (rule 259). And land certificates and certificates of charge may be deposited as security for money: provision being made for the protection of the depositee by means of notice of deposit to be given to the registrar, and to have the effect of a caution under sect. 53 of the Act of 1875 (see rules 243 to 251).

Where a proprietor of a registered charge obtains an order for foreclosure absolute, he will be registered as proprietor (subject to prior charges) of the land in which the equity of redemption is foreclosed on production to the registrar of the order or an office copy (rule 164).

C.—*Transmission of Land and Charges on Death or Bankruptcy.*

Transmission on death.

Upon the death of a sole (or sole surviving) registered proprietor of land, or a charge, it may be desirable for purposes of administration that his personal representatives should be registered in his place (see the Act of 1897, sect. 1). Upon production of the probate or letters of administration, the registrar is to make the proper alteration in the register (rule 183). The personal representative will be described therein as "Executor *or* executrix (*or* administrator *or* administratrix) of [*name*] deceased," and if an executrix or administratrix is a married woman that fact will be stated (rule 183). But where the personal representative has given the assent or made the conveyance referred to in sect. 3 (1) of the Act of 1897, or made such appropriation as is mentioned in sect. 4, the transfer on the register will be effected without the previous registration of the personal representative (see Act of 1897, sect. 9 (6), and rules 185 and 104). Forms of assent or appropriation must be executed by the personal representative (see forms 51 and 52). And it is conceived that in like manner a personal representative

may sell the land or charge in the course of his administration of the estate, and transfer to the purchaser without previous registration (see the Act of 1897, s. 9 (6)).

Where a settlement is created by the will of a sole registered proprietor, or arises in consequence of his death (*e.g.*, where a tenancy by the curtesy arises), the personal representative must at the proper time (*i.e.*, apparently when the estate has been wound up) apply for the registration in the place of the deceased proprietor of a person entitled to be registered in accordance with sect. 6 (5) and (1) of the Act of 1897, and for the proper restrictions to be entered in the register (*Ib.*, and rule 186). And where the deceased proprietor was a tenant for life, registered pursuant to sect. 6 (1) of the Act of 1897, it is the duty of the trustees of the settlement (if any) to apply for the registration of a successor under the settlement, with the proper restrictions and inhibitions (if any) (sect. 6 (4)). They and their solicitor must make a statutory declaration as to the state of the settlement, and that the proper restrictions are those applied for, or that none are required (rule 187). And the registrar may require a certificate of counsel in support of the declaration (rule 188). But where the declaration and certificate (if required) are produced, production of the settlement or further evidence is not to be required (rule 189). If there are no trustees of the settlement, or they neglect to make the application, any person interested under the settlement may apply for the registration of a new proprietor, in which case the registrar will frame the proper entries (rule 190). It is conceived that as a general rule trustees should be protected by the settlement from liability for not making these applications. Upon the death of one of several joint proprietors, the survivors should apply for the withdrawal of his name, with proper evidence of his death (rule 191).

Transmission on bankruptcy.

Upon the bankruptcy of the registered proprietor of land, or a charge, the Official Receiver will probably

lodge a caution under sect. 53 of the Act of 1875, and is entitled to be registered in the place of the bankrupt on production of a certificate signed by the Official Receiver that the land or charge is part of the property of the bankrupt divisible among his creditors (Act of 1875, sect. 43, rule 193). Provision is made by the rules for the displacement of the Official Receiver by a trustee in bankruptcy subsequently appointed, and for the registration of the trustee where the Official Receiver has not been registered (rules 194, 195), and for the substitution of the Official Receiver, or a new trustee, upon a registered trustee vacating his office by death, removal, or otherwise (rules 198 and 199).

V.—Unregistered Dealings with Registered Land or Charges.

Unregistered dealings.

The registered proprietor alone is entitled to transfer or charge registered land by a registered disposition; but subject to this paramount right any person, whether the registered proprietor or not, having a sufficient estate or interest may create estates and interests in the land in the same manner as he might do if the land were not registered (Act of 1875, sect. 49). And registered charges are in the same position (*ib.*). Where an estate or interest is so created otherwise than by registered disposition, the owner of such estate or interest may protect it from being impaired by any act of the registered proprietor, by causing to be entered on the register a notice or caution or other entry restricting the power of disposition of the registered proprietor (Act of 1875, sect. 49). *E.g.*, where the registered proprietor or other person having power to do so (*e.g.*, a tenant for life, where the trustees of the settlement are registered), grants a lease or agreement for a lease for a life or lives, or a term exceeding twenty-one years, or for a less estate

Notices and cautions.

Notice of leases.

where there is no occupation under the lease or agreement, the lessee or any other person interested in the lease or agreement may apply for notice to be entered on the register (Act of 1875, sects. 50 and 51). The application must be accompanied by the lease or counterpart, or by the agreement or duplicate, as the case may be, and a copy or abstract thereof, and a copy of the plan (if any) thereon, and except where the application is made by the registered proprietor, by the written consent of the registered proprietor of the land against which the notice is to be entered, or his solicitor, or by an order of the Court authorising the registration of the notice (rules 201 to 206 . Where, however, the lease requires registration, the consent of the proprietor of the freehold or superior lease will not be necessary, inasmuch as notice will be entered against the title to the freehold or superior lease under rule 63. It is conceived that in all cases of leases or agreements for leases not coming within sect. 18 of the Act of 1875 and not registered, notice should be entered under rules 201 to 206. The registration of the notice operates to make the lease an incumbrance as against the registered proprietor and persons deriving title through him, including proprietors of incumbrances registered prior to the registration of the notice (Act of 1875, sect. 50, rule 203).

Notice of expiration of lease.

Upon the determination of a lease or agreement so noted in the register, the fact may be notified on the register on the application of any person interested upon proper evidence being produced (rule 219 . Similarly, an estate in dower or by the curtesy may be protected by notice. The application should be in form 54, accompanied by the proper evidence of title (rule 207). It will also often be prudent to have notice entered on the creation of a right of way or other easement affecting the land (see sect. 18 of the Act of 1875, as amended by the Act of 1897 (first schedule) and rule 215). And, generally, any person becoming interested in registered land or a charge

Notice of estate in dower or by curtesy.

Cautions generally.

under an unregistered instrument or otherwise (*e.g.*, a judgment creditor) may lodge a caution (form 58) under sect. 53 of the Act of 1875, restraining dealing with such land or charge on the part of the registered proprietor without notice to the cautioner (rules 226 to 233, form of notice, form 60, and of statutory declaration in support of caution, form 15), subject to liability to pay compensation for damage sustained by the caution being lodged without reasonable cause (Act of 1875, sect. 56).

Inhibitions.

In like manner further dealings with registered land or charges may be inhibited until further order or entry under sect. 57 of the Act of 1875, on application to the Court or the registrar, supported by statutory declaration by the applicant (rules 234, 235).

Restrictions.

And by sect. 58 of the Act of 1875, a registered proprietor is authorised to place restrictions upon his own power of transferring or charging the land (rule 240). These sections and rules afford the means by which a mortgage of registered land for a term will be protected, inasmuch as terms created for mortgage purposes are not leases within the meaning of sect. 11 of the Act of 1875 (see first schedule to Act of 1897). They will be of assistance also upon purchases of life interests and remainders or reversions in settled land, all of which are apparently incapable of direct registration, and can only be protected by entries in the register under sect. 49 of the Act of 1875. Where the land is not registered but is situate in a compulsory district, it will be prudent for a purchaser of such partial interests to lodge a caution against first registration under sect. 60 of the Act of 1875 (see rules 88 to 94 and forms 14 and 15). It would appear that the compulsory provisions of the Act of 1897 do not apply to purchases of this nature.

Married women and persons under disability.

The Act of 1875 contains, it should be observed, special provisions as to proceedings under the Acts by or on behalf of married women and persons under disability (sects. 87 and 88).

Decision of questions arising.

And, lastly, it may be mentioned that in all formal matters the decision of the registrar is to be final, unless the registrar or the Court gives leave to appeal (rule 296); but in other cases any question arising in connection with registration of title or dealings with registered land or charges, or the entries to be made in the register, are to be decided by the registrar, subject to an appeal to the Chancery Division of the High Court (rule 297).

PRECEDENTS.

Contracts and Conditions of Sale.

I.

PRECEDENT I.

FOR SALE OF FREEHOLDS.

CONTRACT *for the* SALE *of* FREEHOLDS *without special* CONDITIONS (*a*).

Parties.

Agreement for sale and purchase.

Parcels.

Price and mode of payment.

Vendor to deliver an abstract of his title;

and to execute a conveyance.

AN AGREEMENT made the —— day of ——, 19—, BETWEEN A. of, &c. [*vendor*], of the one part, and B. of, &c. [*purchaser*], of the other part. THE SAID A. will sell, and the said B. will purchase, the fee simple in possession free from incumbrances of ALL THAT [*parcels*] for the sum of £——, whereof £—— shall be paid immediately on the execution of these presents, and the residue on the —— day of —— next, at the office of ——, when the purchase shall be completed. THE VENDOR shall, within —— days from the date hereof, deliver to the purchaser's solicitors an abstract of his title to the premises. UPON PAYMENT of the said sum of £—— at the office aforesaid, the vendor and all other necessary parties (if any) will execute a proper assurance of the premises to the purchaser, such assurance to be prepared by and at the expense of the purchaser, and to be left by him at the office aforesaid not less than —— days before the said —— day of ——.

(*a*) This agreement will, of course, be subject to the statutory stipulations noticed in the first note to the next Precedent.

PRECEDENT I.

FOR SALE OF FREEHOLDS.

THE POSSESSION will be retained (*a*) by the vendor down to the said —— day of ——, and as from that day all outgoings shall be discharged, and the possession taken by the purchaser, and such outgoings shall, if necessary, be apportioned between the vendor and purchaser. IF FROM any cause whatever the purchase shall not be completed on the said —— day of ——, the purchaser shall pay interest at the rate of £—— per cent. per annum on the unpaid purchase-money from that day until the completion of the purchase. NO ERROR, mis-statement, or omission in the description of the property shall annul the sale; BUT COMPENSATION shall be allowed or given as the case may require, and shall be settled by two arbitrators, one to be named by the vendor and the other by the purchaser, or by an umpire to be appointed by the arbitrators before they enter upon the reference, and the decision of such arbitrators, or their umpire if they disagree, shall be final (*b*). IN WITNESS, &c.

Vendor to retain possession till day fixed for completion.

Purchaser to pay interest on his purchase-money.

Errors not to annul the sale.

Compensation to be settled by arbitration.

(*a*) Or, if the premises be not in hand, "the rents will be received."

(*b*) This agreement, being intended to be followed by a conveyance, should (it is thought) bear a 6*d*. and not an *ad valorem* stamp. See the Stamp Act, 1891 (54 & 55 Vict. c. 39), s. 59; and as to that section generally, *West London Syndicate* v. *I. R. Commissioners*, [1898] 1 Q. B. 226; on appeal, *ib.* 2 Q. B. 507; *Farmer & Co.* v. *I. R. Commissioners*, [1898] 2 Q. B. 141; *Danubian Sugar Factories, Ltd.* v. *I. R. Commissioners*, [1901] 1 Q. B. 245; *Muller, &c. Ltd.* v. *I. R. Commissioners*, [1900] 1 Q. B. 310; on appeal, [1901] A. C. 217.

PRECEDENT II.

FOR SALE OF FREEHOLDS.

II.

CONTRACT *for the* SALE *of* FREEHOLDS, COPYHOLDS, *or* LEASEHOLDS *with Stipulations similar to those used on a Sale by Auction. The clauses of this Agreement may be used as* CONDITIONS OF SALE *with the modifications given in the notes* (*a*).

Parties.

1. AN AGREEMENT, made the —— day of ——, 19—, BETWEEN A. of, &c. [*vendor*], of the one part, and B. of, &c. [*purchaser*], of the other part.

(*a*) In framing agreements for sale, and conditions of sale, the provisions of the V. and P. Act, 1874 (App. II. *infra*), and the Conv. Act, 1881 (App. IV. *infra*), must be borne in mind. The second rule of sect. 2 of the former Act makes recitals and statements in instruments twenty years old at the date of the contract available as evidence, and the provision to the like effect (though more extensive) usually inserted in contracts for sale of real estate may generally be dispensed with, and has been omitted in this and several preceding editions. The provisions in the third, fourth, and fifth rules of the same sections render unnecessary, in simple cases, provisions as to the retainer, and production, of title-deeds. Sub-sect. 3 of sect. 3 of the latter Act renders unnecessary (except in very special cases) the clause formerly usual precluding the purchaser from inquiring into the title prior to the stipulated commencement; and sub-sect. 6 of the same section throws upon the purchaser the expenses of verifying the title, which had previously, under an open contract, fallen upon the vendor, but which, as a rule, it was expressly stipulated that the purchaser should bear. Sub-sects. 1, 4, and 5 of the same section, together with the second rule of sect. 2 of the former Act, in effect oblige a purchaser of leaseholds for years to assume, on production of a receipt for the last payment of rent, that the lease or sub-lease was well created and is subsisting, and do away with the necessity for the corresponding stipulations which had been required in contracts and conditions of sale of leaseholds. See also sect. 4 of the Conv. Act, 1882 (App. V. *infra*), which provides that a contract for a lease under a power shall not form part of the title to the lease. Upon this subject generally reference should be made to Chap. III. of the valuable work on the Law of Vendor and Purchaser by Mr. T. Cyprian Williams.

PRECEDENT II.

FOR SALE OF FREEHOLDS.

Agreement for sale (*a*).

Parcels.

2. THE SAID A. will sell, and the said B. will purchase, at the price of £——, the fee simple in possession [*if copyhold,* customary fee simple in possession] free from incumbrances of ALL THAT [copyhold] messuage or farm-house and farm called —— Farm, in the parish of ——, in the county of ——, containing —— acres or thereabouts, now in the occupation of ——, the particulars whereof are specified in the schedule hereto [*if leasehold,* all that messuage No. —— X. Street, in the parish of Y., in the county of Z., held by the vendor under an indenture of lease dated the —— day of —— for the residue of the term of —— years from the —— day of ——, at the yearly rent of ——, and under and subject to the covenants by the lessee and conditions therein contained; *if registered* being [part of] the lands and hereditaments registered in the district of ——, and parish of ——, under the title No. ——] (*b*).

(*a*) A purchaser will probably desire to know the original site value of the land (if and when ascertained) for the purposes of Part I. of the Finance (1909-10) Act, 1910, and also the amount (if any) upon which increment value duty has been paid. It does not appear to the present editors that this information need form part of the contract or conditions. Ordinarily, if the sale be by private contract it will be communicated, if required, on the settlement of the contract; and if it is to be given on a sale by auction, it should form part of the particulars, or of the general observations now frequently prefixed.

(*b*) In adapting these clauses as conditions of sale, the two first clauses will be omitted. The description of the property will be given in the Particulars, and the following conditions will be substituted for the clauses omitted:—

"1. NO PERSON shall at any bidding advance less than £——, or such other sum as shall be fixed by the auctioneer, and no bidding shall be retracted. The highest bidder shall be the purchaser, subject to [a reserved bidding, and to] the right which the vendor hereby reserves to bid by his agent or agents as often as he or they please.

PRECEDENT II.

FOR SALE OF FREEHOLDS.

Fixtures and timber to be taken at a valuation; or at their fair value.

3. THE FIXTURES [*if leasehold,* tenant's fixtures] and the timber and other trees and underwood down to the value of one shilling per stick on the premises (*a*) shall be paid for by the purchaser at a valuation which, as well as the decision what are fixtures [*or* tenant's fixtures] shall be made by two valuers, or their umpire, appointed before they enter on their valuation; or if no valuation be made, then the said fixtures and trees and underwood shall be paid for by the purchaser at their fair value.

As to commencement of title.

4. THE TITLE shall commence with the will of ——, dated the —— day of ——, and the purchaser shall assume that at the date of his will the said [*testator*] was seised in [customary] fee simple of the property now sold, [*or, if a conveyance be made the root of title,* with an indenture dated the —— day of ——, and being a conveyance on sale (*b*), *or, if the property be copyhold,* with a surrender thereof to and admittance of M. N. on a sale in the year ——, *or if the property be leasehold,* with the lease [*or* underlease] under which the same is held] (*c*).

If any dispute arise respecting a bidding, the property shall be put up again and resold.

"(2.) THE PURCHASER shall immediately after the sale pay a deposit of —— per cent. of his purchase-money into the hands of [*the auctioneer*], and sign the subjoined agreement."

If the property be sold in several lots, "lot" will be substituted for "property" and "each purchaser" for "the purchaser."

(*a*) In conditions substitute for "the premises" the words "the property" or on a sale in several lots, "each lot," or "lots —— and ——."

(*b*) The nature of the deed with which the title commences should always be mentioned. See conditions as to registered land, p. 119, *infra.*

(*c*) On a sale in several lots, this clause must be modified if the lots are held under different titles, thus "as to lot —— with,

5. THE PURCHASER shall admit the identity of the property purchased (*a*) with that comprised in the muniments offered by the vendor as the title to such property, upon the evidence afforded by a comparison of the descriptions in these presents and the muniments, and of a statutory declaration to be made, if required, at the purchaser's expense, that the purchased property has been enjoyed according to the title for —— years.

Identity of the property to be admitted.

6. THE PROPERTY (*b*) is believed, and shall be taken to be correctly described, and is sold subject to [the existing tenancies, and to] all chief and other rents, rights of way and water and other rights and easements (if any) charged or subsisting thereon (*c*); and no error, mis-statement, or

Errors of description not to annul the sale.

&c., and as to lots —— and —— with, &c.;" and if the property be leasehold, add "a copy of which may be seen at the office of the vendor's solicitors during office hours, at any time before the sale, and will be produced, if required, at the sale." As to the necessity of these or similar words on a sale of leasehold property, see *Reeve* v. *Berridge*, 20 Q. B. D. 523; *Re White and Smith's Contract*, [1896] 1 Ch. 637; *Molyneux* v. *Hawtrey*, [1903] 2 K. B. 487. The following clause (as to which see *Re Willett and Argenti*, W. N. 1899, 66, and *Re Stuart and Olivant and Seadon's Contract*, [1896] 2 Ch. 338) is sometimes added:—"The vendor shall bear the expense of producing all documents not in his possession which are required for the purpose of verifying the abstract."

(*a*) On a sale in lots, substitute "each purchaser shall admit the identity of the property purchased by him;" and instead of "these presents" say "the particulars." This and the following condition will seldom be needed as to land registered with an absolute title.

(*b*) On a sale in lots, substitute "each lot."

(*c*) Unless the words "and will be conveyed" are inserted after the word "sold" it would appear that the vendor is not entitled to have the conveyance made expressly so subject. See *Gale* v. *Squier*, 4 Ch. D. 226; affirmed 5 Ch. D. 625.

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misdescription shall annul the sale, nor shall any compensation be allowed in respect thereof (*a*).

Payment of purchase-money.

7. THE PURCHASER shall pay [£——, part of the said purchase-money, into the hands of ——, the vendor's solicitors, as stakeholders for both parties, immediately on the execution of this agreement, and shall pay] (*b*) the residue of his purchase-money, together with the value of the fixtures and timber and other trees and underwood, on the —— of —— next, at the office of ——, the vendor's solicitors; and upon payment thereof the vendor and all other necessary parties (if any) shall execute a proper assurance of the premises sold to the purchaser, [*or, where the property is registered*, a proper transfer in the prescribed form of the premises sold to the purchaser, and also, if so required by the purchaser, a preliminary or contemporaneous assurance thereof in the form which would be proper if the land were unregistered] such assurance[s] [and every other assurance and act, if any, required by the purchaser for perfecting or completing the vendor's title] to be prepared [and done] by, and at the expense of the purchaser (*c*), and, as to the assurance[s]

Vendor to execute assurance.

(*a*) A clause providing for compensation being given will be found *supra*, p. 109.

(*b*) In conditions the words in brackets will be omitted, and if the sale be in lots, "each purchaser" will be substituted for "the purchaser." On sales by private contract where there is no reason to doubt the responsibility of the purchaser, a deposit is frequently, perhaps usually, dispensed with. If a deposit is paid to the vendor's solicitor, it should be as stakeholder. See *Ellis* v. *Goulton*, [1893] 1 Q. B. 350. The same case illustrates one of the dangers (often overlooked) of paying to the vendor himself.

(*c*) The words within the last two brackets would throw upon the purchaser the cost of the concurrence in the conveyance of a mortgagee. See *Re Sander and Walford's Contract*, W. N. 1900, 183.

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by the vendor, to be left *fourteen* days at least before the said —— day of —— next, at the office aforesaid (*a*).

(*a*) Regard being had to the necessity of stamping the conveyance with a denoting stamp in respect of the increment value duty imposed by the Finance (1909—10) Act, 1910 (see sect. 4), it is desirable that there should be a sufficient interval between the delivery of the engrossment and the date for completion. For some considerable time at least, and probably as a general rule, it will be impossible to stamp the conveyance with the stamp (a) mentioned in sect. 4 (3) of the Act within a short period after completion, and it is understood that the common procedure will be for the vendor to execute the deed and present it for the purpose of the duty being assessed to the Commissioners of Inland Revenue (see sub-sect. (2)), who, in all ordinary cases, will return it with an undertaking, on its being again presented to them, to stamp it with stamp (b) mentioned in sect. 4 (3), and that the deed, together with the undertaking, will, upon completion, be delivered to the purchaser, and that the purchaser will then present it to the Commissioners for stamping as well with the stamp referred to as with the *ad valorem* stamp. It should be observed that the Commissioners may, under sub-sect. 3 (b), require security for the payment of the duty before giving the undertaking above mentioned, but it is believed that this course will not be taken except in extraordinary circumstances. It will be noticed that although the conveyance will not be duly stamped unless a denoting stamp under sect. 4 (3) is affixed, the purchaser will be sufficiently protected by stamp (b) mentioned in sub-sect. (3), and that it will not be incumbent upon him to see that any increment value duty payable is actually paid. If desired the following addition may be made at the end of clause 7 by way of indication to a purchaser of the course intended to be adopted by the vendor with reference to the duty in question :- "The vendor will, as soon as may be after the last mentioned assurance shall have been left at the office aforesaid, present the same duly executed by him to the Commissioners of Inland Revenue for the purpose of the assessment of increment value duty thereon, and will, in case such assurance shall be so left within the time aforesaid, endeavour to procure from the Commissioners, before the date hereby fixed for completion of the purchase, an undertaking to stamp the same on

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Receipt of rent.

8. THE RENTS [*or* possession] will be received [*or* retained], and the outgoings (*a*) discharged by the vendor [*or* the owners of the equity of redemption] down to the said —— day of —— next, and as from that day the outgoings shall be discharged, and the rents [*or* possession] taken by the purchaser; and such rents and outgoings shall, if necessary for the purposes of this clause, be apportioned.

Purchaser to pay interest on unpaid purchase-money.

9. IF FROM any cause whatever the purchase (*b*) shall not be completed on the said —— day of —— next, the purchaser shall pay interest on the unpaid purchase-

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subsequent presentation with the denoting stamp mentioned in sect. 4 (3) (b) of the Finance (1909—10) Act, 1910, and will on completion deliver such undertaking, if obtained, to the purchaser, who shall be satisfied therewith and shall not make any objection with reference to the said duty or require any further act to be done by the vendor in connection with the same." On a sale by private contract it may sometimes be desirable in the interest of the purchaser to add:—"In case the vendor shall not on or before the —— day of —— either procure and deliver to the purchaser such an undertaking as hereinbefore is mentioned or procure these presents or the assurance to the purchaser to be stamped with one of the denoting stamps mentioned in sect. 4 (3) of the said Act, the purchaser shall be at liberty by notice in writing to be given to the vendor or his solicitor at any time to rescind the contract with the same or the like consequences as are mentioned in clause 10 hereof with reference to the case of a rescission of the sale by the vendor." For the regulations made by the Commissioners under sect. 4, see the Weekly Notes of 1910, p. 209. As to the *ad valorem* duty, see sect. 73 of the Act referred to, and p. 135, *infra*, n. (*b*).

(*a*) See *Tubbs* v. *Wynne*, [1897] 1 Q. B. 74; *Stock* v. *Meakin*, [1900] 1 Ch. 683; *Re Allen and Driscoll's Contract*, [1904] 2 Ch. 226.

(*b*) On a sale in lots, substitute "any purchase."

money, and on the value of the fixtures and timber and other trees and underwood, at the rate of £—— per cent. per annum from that day until the completion of the purchase, and shall not be entitled to actual possession until such completion, but the vendor shall not be responsible for any deterioration of the property or otherwise in relation to its condition after that day.

Purchaser to send objections to title within — days.

10. THE PURCHASER (*a*) shall send his objections and requisitions (if any) in respect of the title or otherwise to the office aforesaid, within —— days from the delivery of the abstract, and in this respect time shall be of the essence of the contract; and in default of such objections and requisitions (if none, and subject only to such (if any) shall be deemed to have accepted the title; and if he shall insist on any objection or requisition which the vendor shall be unable or unwilling to remove or comply with, the vendor may, by notice in writing, to be given to the purchaser or his solicitor at any time, and notwithstanding any negotiation or litigation in respect of such objection or requisition, rescind the sale, [and shall thereupon return to the purchaser the said sum of £—— (*b*)] but the purchaser shall not in that case be entitled to any [interest] costs, or other compensation or payment whatsoever.

Vendor if unable to remove objections may rescind the sale.

Purchaser not complying with conditions to forfeit his deposit.

11. IF THE PURCHASER (*c*) shall fail to comply with the above stipulations, the said sum of £—— (*d*) shall be wholly forfeited to the vendor, who may thereupon re-sell the property in such manner as he shall think fit, and any deficiency in price which may happen on, and all expenses

(*a*) On a sale in lots, substitute "each purchaser."

(*b*) The sum (if any) to be paid on the execution of the agreement. In conditions, substitute "his deposit."

(*c*) On a sale in lots, substitute "any purchaser," and below after the "property," add "bought by such purchaser."

(*d*) The sum (if any) to be paid on the execution of the agreement. In conditions, substitute "his deposit."

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attending such re-sale, shall be borne by the purchaser, and shall be recoverable by the vendor as liquidated damages. IN WITNESS, &c. (*a*).

THE SCHEDULE above referred to.

(*a*) The foregoing stipulations are sufficiently usual in practice to be properly inserted in a contract or conditions of sale under ordinary circumstances, and are generally submitted to; but some of them, *e.g.*, the last clause, are often and properly objected to by purchasers by private contract, and in such cases the settlement of the contract must be matter for arrangement, according to the circumstances of the parties. If this Precedent be adopted as conditions, the following form of memorandum or agreement for the purchaser's signature, or that usually adopted by the auctioneer, should be subjoined. Such memorandum should designate the vendor by name, or sufficient description. See Dart, V. & P. 7th ed. p. 234, and cases there cited; and *Lavery* v. *Pursell*, 39 Ch. D. 508; *Butcher* v. *Nash*, W. N. 1889, p. 116; *Coombs* v. *Wilkes*, [1891] 3 Ch. 77; *Filby* v. *Hounsell*, [1896] 2 Ch. 737; *Carr* v. *Lynch*, [1900] 1 Ch. 613.

Purchaser's contract.

"I —— acknowledge that I have this day purchased [lot —— of] the property described in the annexed particulars for the sum of £—— under the foregoing conditions of sale, and that I have paid a deposit of £—— on account of the purchase-money, and I undertake to pay the remainder of the purchase-money, and to complete my purchase according to the said conditions.

Witness my hand this —— day of —— 19—.

Purchase-money	. .
Deposit	.
To be paid £	: :

On behalf of A. B., the vendor, I ratify this sale and [as auctioneer] acknowledge the receipt of the said deposit of £——."

As to the stamp, see note (*b*), on p. 109, *supra*.

III (*a*).

MISCELLANEOUS CLAUSES *in* CONTRACTS *and* CONDITIONS *of* SALE *to be used in connection with the last Precedent.*

PRECEDENT III.

MISCELLANEOUS CLAUSES.

I. THE VENDOR is registered as proprietor of the property with an absolute title [subject to certain mortgages and charges, the title to which shall commence with the instruments by which the same respectively were created].

Title to registered land (*b*).

II. THE VENDOR is registered as proprietor of the property, with a qualified title, the qualifications being as follows:—[*Here set them out, and add such stipulations as may be proper with reference to commencement of title when the length is qualified, or precluding objections resulting from the qualifications*].

The like (*b*).

III. THE VENDOR is registered as proprietor of the property with a possessory title, the first registration being dated ——. The title shall commence, &c.

The like (*b*).

IV. THE VENDOR is registered as proprietor of the property with a —— title, subject to a registered charge [affecting the same and other property], dated the —— day of ——, 189 –. The vendor shall not be required to procure such charge to be discharged before completion, or otherwise than by a discharge in the prescribed form, but the certificate of charge will, upon completion, be deposited at the Registry for the purpose of enabling the

The like, subject to registered charge.

(*a*) This Precedent contains a variety of clauses and conditions intended to be used in connection with Precedent II., but somewhat special in their character. It is sometimes said that sales are never hampered by stringent conditions. But this, according to the writers' experience, is a mistake. And unquestionably the practitioner who introduces into either conditions, or a contract for sale, needless stipulations of any description, incurs a grave responsibility.

(*b*) To be substituted for clause 4 of the last Precedent.

PRECEDENT III.

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charge to be discharged [so far as regards the property sold].

As to first registration of leaseholds in compulsory district (*a*).

V. THE VENDOR is not and shall not be required to become registered as proprietor of the land, but the purchaser shall at his own expense procure himself to be registered as such proprietor within *three* calendar months after the completion of the purchase, and the assignment to the purchaser shall (if so required by the vendor) contain a covenant by the purchaser to that effect [and also an appointment of the vendor as the attorney and agent of the purchaser to effect such registration at the purchaser's expense in case the same shall not be effected within the *three* months aforesaid].

Title prior to specified commencement not to be required (*b*). Earlier title to be given if required at purchaser's expense.

VI. THE PRIOR title, whether appearing in any abstracted document or not, shall not be required, investigated or objected to. NEVERTHELESS if the purchaser shall desire to investigate the prior title, commencing with a conveyance on sale in the year —— [*or as may be*], and of such desire shall give to the vendor or his solicitor notice in writing within *seven* days after the delivery of the abstract of the later title, then the purchaser shall be entitled to have such prior title abstracted and deduced as usual, but at his own expense in all respects [*or* abstracted and verified, and to make objections and requisitions in relation thereto in the usual way, subject to the restrictions and stipulations contained in clause —— hereof, and subject to the obligation of paying the expenses of and incidental to the preparation and verification of the abstract of such prior title, and of removing or attempting to remove objections, and complying or attempting to

(*a*) This condition is applicable to a sale of a leasehold in a compulsory district when the purchaser would not become legal owner until registration. It seems doubtful whether until registration of the purchaser as first proprietor the vendor would not remain liable on the covenants in the lease.

(*b*) To follow after clause 4 of the last Precedent, for the purpose of precluding *aliunde* objections, as to which see *supra*, p. 21.

comply with requisitions in relation thereto, and generally all expenses whatever relating to or connected with the deduction of the prior title].

Receipt for rent evidence (*a*).

VII. THE PRODUCTION of a receipt for the last payment of rent accrued previously to the completion of the purchase shall be conclusive evidence that the covenants and conditions of the lease [and of every superior lease] have been performed or observed down to such completion, or as regards any which may appear to have been broken that the breach thereof (whether continuing or not) has been waived. No requisition or inquiry shall be made with respect to the title of the person by or on behalf of whom such receipt shall be given, or his right to give or authorise the same.

As to stamping and registration of documents.

VIII. THE PURCHASER shall bear the expenses of stamping or further stamping any documents, executed before the 17th day of May, 1888 (*b*), which may be unstamped or insufficiently stamped, and no objection or requisition shall be made on the ground that any document executed as aforesaid is not properly stamped or on account of the non-registration in the county register of any document which might or ought to have been so registered.

Attested copies to be evidence, and no objection to be made in respect of covenants for production (*c*).

IX. THE PURCHASER shall not require the production of any document of which the vendor shall produce an attested copy, or make any objection or requisition on account of the absence or insufficiency of any covenant,

(*a*) It may be prudent to insert this clause where there have been breaches, and the last portion of it may be useful where the title to the reversion is doubtful.

(*b*) See the Stamp Act, 1891 (54 & 55 Vict. c. 39), sect. 117.

(*c*) See V. & P. Act, 1874, App. II., *infra*, sect. 2, which is certainly not sufficient to meet all the cases provided for in this clause. Moreover, it is not clear under what circumstances an equitable right to production is gained. As to the legal consequence of a condition requiring the purchaser not to make any objection or requisition in respect of matters of title, see *Re Scott and Alvarez's Contract*, [1895] 2 Ch. 603.

PRECEDENT III.

MISCELLANEOUS CLAUSES.

acknowledgment, or undertaking for the production or safe custody of documents.

Documents to be evidence (*a*).

X. EVERY DOCUMENT dated more than —— years ago shall be conclusive evidence of everything recited, noticed, or implied therein, and also of the contents and due execution of every document recited or noticed therein [which is not in the possession or under the control of the vendor], and that no such recited or noticed document contains anything material to the title beyond what is so recited or noticed, and the purchaser shall not require the production of or make any objection or requisition in relation to any such recited or noticed document.

As to different titles, tenures, and quantities, and boundaries (*b*).

XI. THE VENDOR shall not be required to distinguish what parts of the property are held under different titles or tenures, or to account for any discrepancies in the quantities, and the purchaser shall not make any objection or requisition on the ground of the existence of any such discrepancy or with respect to any encroachment. [*If the land be registered, add where proper*, "The description of the property in the register shall be conclusive as to the boundaries thereof."]

Vendor fiduciary and not to be required to enter into covenants except against incumbrances (*c*).

XII. THE VENDOR is a mortgagee [proprietor of a registered charge *or* trustee] selling under a power of [trust for] sale [*or* is the personal representative of a deceased person, and is selling under the power conferred upon him in that character by Part I. of the Land Transfer Act, 1897], and the concurrence of the owners of the equity of redemption [persons beneficially interested] shall not be required and the vendor shall not be required to enter into any covenant other than the implied statutory covenant against incumbrances [*or* to give or enter into any undertaking or covenant for the safe custody of muniments].

(*a*) This goes much further than the corresponding provision contained in sect. 2 of the V. & P. Act, App. II., *infra*.

(*b*) To follow after clause 5 of the last Precedent.

(*c*) To follow clause 7 of the last Precedent.

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A like provision as to covenants generally, and muniments(*a*).

XIII. NO PARTY to any such assurance, being a trustee or mortgagee, or executor, or administrator, shall be required to give any covenant other than the statutory covenant implied by reason of his being expressed to convey as trustee, mortgagee, or personal representative, as the case may be, or to give any undertaking or covenant for, or in relation to, the safe custody of muniments or documents retained by him, and the vendor shall not be required to give any undertaking or covenant for or in relation to the safe custody of muniments or documents retained by any person other than himself, or to give or to procure any statutory or other acknowledgment, undertaking, or covenant with reference to any documents which are neither in his own possession nor in the possession of some other necessary party or parties to such assurance.

Tenant for life vendor (*a*).

XIV. THE VENDOR is selling by virtue of his statutory power under the Settled Land Act, 1882, and he shall not be required to enter into any other covenant than that implied by his conveying as beneficial owner, with the usual qualifying proviso.

As to terms of tenancies.

XV. COPIES OF the leases and written agreements with tenants may be seen at the office of the vendor's solicitors during office hours at any time before the sale, and will be produced at the sale, and the purchaser shall be deemed to have full notice of the contents thereof.

Payments by purchaser to tenants.

XVI. THE PURCHASER [of lot ——] shall make to the outgoing tenant all such payments and allowances as he may be entitled to under his lease or agreement, or according to the terms of his tenancy or the custom of the country.

As to fire insurance (*b*).

XVII. THE PROPERTY shall, as from the date of these presents, be at the risk of the vendor so far as regards loss or damage by fire to the extent of the insurance

(*a*) To follow clause 7 of the last Precedent.
(*b*) To follow clause 8 of the last Precedent.

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thereof (if any) but not further or otherwise, and without any guarantee on his part that such insurance is subsisting, or liability to keep up or renew the insurance or any right on the purchaser's part to rescind the contract on account of such loss or damage having occurred, or to make any objection on that account or requisition in relation thereto, except for the restoration of the property to the extent of the subsisting insurance (if any).

The same, another form (*a*).

XVIII. THE PURCHASER shall be entitled to the benefit of the subsisting insurance upon the property against loss or damage by fire subject to the consent of the office and to his paying a proper proportionate part of the premium for the unexpired period of the insurance, but without any liability on the part of the vendor to keep up or renew the same.

Sale of business as a going concern (*b*).

XIX. THE POSSESSION and profits of the said business (which is sold as a going concern) will be retained, and the wages and other outgoings connected therewith will be discharged by the vendor down to the said —— day of —— next, and on, or if the purchase shall not then be completed, as from that day, the possession and profits shall be taken, and the wages and outgoings discharged

(*a*) Where the property is insured this clause is desirable, unless the purchaser intends to insure for himself. In the absence of such a clause the purchaser would not be entitled to the benefit of the policy: see *Rayner* v. *Preston*, 18 Ch. D. 1; *Castellain* v. *Preston*, 11 Q. B. D. 380; *Phœnix Assurance Co.* v. *Spooner*, [1905] 2 K. B. 753; nor apparently could he demand the reinstatement of the property under the Act 14 Geo. 3, c. 78, s. 83. As to the application of this sect., see *Ex parte Gorely*, 4 D. J. & S. 477; *Westminster Fire Office* v. *Glasgow Provident Society*, 13 App. Cas. 699; *Re Quicke's Trusts*, [1908] 1 Ch. 887, at p. 893. See also on this subject generally, Williams on V. & P., pp. 442-446. It is believed, however, that it is the practice of most insurance offices not to insist on their strict rights as against purchasers under the circumstances referred to.

(*b*) To be substituted for clauses 8 and 9 of the last Precedent.

by the purchaser, and such profits, wages, and outgoings, shall, if necessary, be apportioned. If from any cause the purchase shall not be completed on that day, the business shall be carried on by the vendor at the expense and risk and for the benefit of the purchaser, who shall pay interest on the unpaid purchase-money at the rate of £—— per cent. per annum from that day until such completion. Every difference arising under, out of, or in consequence of this clause shall be referred to two arbitrators, one to be appointed by each party pursuant, and so as with regard to the mode and consequences of the reference, and in all other respects, to conform to the provisions in that behalf of the Arbitration Act, 1889, or any statutory modification thereof for the time being subsisting.

Arbitration.

XX. LOT —— was formerly copyhold and the title thereto shall commence as to the copyhold interest with a covenant to surrender by way of settlement, and surrender and admittance accordingly, in the year 186—, and as to the freehold with the enfranchisement deed dated in the year 188—.

Title to enfranchised copyhold.

XXI. THE PURCHASER of lot —— shall take it with the title under which it is now held by the vendor. [An abstract of this title may be seen at the office of —— [*vendor's solicitor*] during office hours at any time before the sale, and will be produced at the sale.]

Such title as vendor has to be accepted (*a*).

XXII. THE PURCHASER of lot —— shall assume that the vendor is seised in fee simple in possession of the property comprised therein, and shall not investigate or make any objection or requisition in respect of the title thereto.

Vendor's title to be assumed.

(*a*) This and some of the following conditions are taken or adapted (by permission) from forms in Dav. Prec. Conv., vol i. A condition that the vendor's title is to be accepted does not bind the purchaser if he is not cognizant of the state of the title. *Re Haedicke and Lipski's Contract*, [1901] 2 Ch. 666.

PRECEDENT III.

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As to licence to assign lease (*a*).

XXIII. THE LEASE [of lot ——] contains a restriction on assignment without the licence of the reversioner. The vendor will endeavour at his own expense to obtain such licence, but in case he shall be unable to obtain the same, he shall be entitled to rescind the sale on the terms on which he would have been entitled under these conditions to do so, if the purchaser had made a requisition incapable of being complied with.

As to land tax.

XXIV. NO EVIDENCE shall be required of the land tax having been redeemed, beyond a declaration that none is now paid, or that the property is not now assessed to land tax.

As to apportionment of rent on sale of reversion.

XXV. AS THE PROPERTY comprised in lots —— and —— is let on lease to A. B. at an entire rent of £—— per annum, the said rent shall be apportioned among those lots in the shares mentioned in the particulars, and the concurrence of the tenant shall not be required to the apportionment.

Rentcharge to be charged exclusively on one lot.

XXVI. A PERPETUAL RENTCHARGE [chief rent] of £—— per annum payable out of the whole property offered for sale shall henceforth be charged exclusively on the part comprised in lot —— and the purchaser of that lot (or the vendor in case the lot be not sold) shall in a usual and proper manner indemnify the remainder of the property and the owners thereof against the payment of the rentcharge, and all expenses incidental thereto, the form of indemnity in case of dispute to be settled by the vendor's counsel at the joint and equal expense of the disputants unless he shall in his discretion otherwise determine.

Apportionment of rent service on sale of part of leasehold (*b*).

XXVII. AS THE PROPERTY offered for sale is held under the same lease with other property not included in this sale, there shall be payable by the purchaser the yearly

(*a*) As to a vendor's duty with reference to such licence, see *Day* v. *Singleton*, [1899] 2 Ch. 320; and as to the position where the licence is refused, *Re Marshall and Salt's Contract*, [1900] 2 Ch. 202.

(*b*) A form of assignment in pursuance of this condition will be found at p. 201, *infra*. An assignee (it should be observed) of part

sum of £—— mentioned in the particulars as an apportioned part of the rent reserved by the lease, and the assignment to the purchaser shall contain usual and proper provisions to that effect and consequential indemnities (by covenant and powers of distress and entry) on the part of the purchaser, the form of which in case of dispute shall be settled by the vendor's counsel, but no legal apportionment of the rent shall be required.

Sale in lots of leasehold to be assigned to one purchaser who shall grant underleases to the others (*a*).

XXVIII. As LOTS —— [the property offered for sale] are [is] held under one lease at an entire rent of £—— per annum, such rents shall be apportioned among those lots [the several lots] in the shares mentioned in the particulars, and the assurances of such lots shall be

of the premises can sue the lessor on his covenants: see *Palmer* v. *Edwards*, 1 Dougl. 187, n.

(*a*) See Precedents XXXVI. and XXXVII., *infra*. It is thought that, regard being had to the Conv. Act, 1892, s. 4, and to sect. 7 of the Conv. Act, 1881, sub-s. (6), this (which has been the usual) is now the most convenient mode of dealing with a leasehold sold in lots. But it may sometimes be desirable to throw the whole rent upon one lot, and to provide that the purchaser of that lot shall take an assignment of the whole property, and grant underleases to the other purchasers at nominal rents. The condition is intended to follow clause 7 of the last Precedent. It might easily be modified to suit the arrangement by which the underleases are granted by the vendor, but that involves the introduction into each underlease of covenants by the vendor for title and further assurance, unless it is expressly stipulated that he shall not enter into such covenants; and both alternatives are objectionable. It was decided by Kekewich, J., that trustees for sale of leasehold property comprised in one lease cannot dispose of it in lots by granting underleases with nominal reversions at apportioned rents, the objection being that such a transaction is not a sale (*Re Walker and Oakshott's Contract*, [1901] 2 Ch. 383); but the decision has been overruled: *Re Judd and Poland and Skelcher's Contract*, [1906] 1 Ch. 685. Where part of a leasehold is assigned to one for the residue of the term, and other part is demised to another for a derivative term, neither (it seems) has any right to compel from the other contribution towards payment of the rent (*Johnson* v. *Wild*, 44 Ch. D. 146).

PRECEDENT III.

MISCELLANEOUS CLAUSES.

effectuated in the following manner (that is to say): The purchaser of the largest lot in value [lot ——] shall take an assignment of the existing lease, and shall execute to the respective purchasers of the other lots underleases for the whole term, wanting *three* days, of the lots purchased by them respectively at the said apportioned rents, every such underlease to contain all proper covenants by the under-lessee for securing the payment of the rent apportioned to and the performance of the covenants of the original lease in respect of the lot purchased by such under-lessee, and comprised in the underlease, [and a proviso for re-entry by the person by whom such underlease shall be granted on non-payment of rent or breach of covenant by the under-lessee] and also usual covenants by the person by whom the underlease shall be granted for quiet enjoyment by the under-lessee, [and for payment of the rent reserved by the original lease, and performance of the covenants of that lease in respect of the remainder of the premises therein comprised] and a proper acknowledgment and undertaking by such person for the production and safe custody of the original lease and assignments thereof, but not any covenants for title by the vendor or other covenant of any description. The purchaser of the largest lot in value [lot ——] shall deliver to the vendor a duplicate of the assignment to be prepared and executed by and at the expense of the assignee, and every underlessee shall deliver to the person by whom the underlease shall be granted a counterpart of such underlease, to be prepared and executed by and at the expense of the underlessee. If any lot [lot ——] shall remain unsold, the vendor shall, for the purposes of this condition, stand in the place of the purchaser of the largest lot in value, [lot ——] and if all the lots shall be sold, and two or more lots shall be found to be equal in value, the assignment of the original lease shall be taken by such one of the purchasers of those lots as the vendor shall direct. The form of the assignment and of every underlease shall be

settled, in case of difference, by the vendor's counsel, whose decision shall be final and binding on all parties.

PRECEDENT III.

MISCELLANEOUS CLAUSES.

As to fences and roads.

XXIX. THE PURCHASER of each lot shall, at his own expense, erect substantial oak fences or brick or stone walls along the inside boundaries thereof, which are marked ⌈ on the plan; and shall at all times keep such fences or walls in good repair, and covenant so to do in his conveyance. The purchasers of the lots numbered 4 to 8, both inclusive, shall jointly make and for ever maintain the occupation road shown upon the plan. Such road shall be of the width shown on the plan, and the owners, tenants, and occupiers respectively for the time being of all the last-mentioned lots respectively shall have the right to use the same. Every purchaser on whom the making and maintaining of any road or part of a road is imposed by this condition shall, in the conveyance or conveyances to him, covenant with the vendor, his heirs and assigns, to make and maintain the same accordingly, and in each such conveyance shall be contained a reservation to the vendor, his heirs and assigns, and to all other persons entitled under this condition to the use of such road, of rights of way for all lawful purposes over the said road. As regards lots which shall not be sold, the vendor shall [not] for the purposes of this condition be in the position or subject to the liabilities of a purchaser.

No house to be built below fixed cost.

XXX. IF THE property be sold in lots, no house shall be built on any of the lots 1, 2, 3, and 4, costing in carcass less than £——, and no house shall be built on lots 5, 6, 7, 8, and 9 respectively, costing in carcass less than £——, and no house erected on any of the lots, except lot 1, shall be used for any other purpose than as a private dwelling house only. Any house erected on lot 1 may be used as a private dwelling-house, or as a club or hotel, but not for any other purpose.

Restriction as to use of houses.

PRECEDENT III.

MISCELLANEOUS CLAUSES.

General condition that conveyances be made with and subject to the stipulated rights (*a*).

XXXI. THE SEVERAL conveyances of the respective lots affected by the foregoing stipulations numbered —— shall be made with the rights and subject to the liabilities created by such stipulations, but the vendors shall not be bound to enter into any covenants in relation to such rights or liabilities, or to enforce the same further or otherwise than by compelling each conveyance to be made with such rights and subject to such liabilities. The respective conveyances shall contain such provisions with respect to those rights and liabilities as the vendor's counsel shall consider necessary or proper for giving full effect to the aforesaid stipulations, and the respective purchasers shall execute the conveyances of the lots purchased by them, but shall not be entitled to see the conveyances to any of the other purchasers, or to make any requisition, objection, or inquiry relative thereto. If any of the lots be not sold at this auction, the vendor shall [not] for the purpose of the foregoing stipulations stand in the place of purchasers of those lots so as to be bound thereby.

Conveyance of registered land.

XXXII. THE ASSURANCE [conveyance *or* assignment of every lot affected by any of the foregoing stipulations, numbered ——] shall be in the form which would have been proper [regard being had to those stipulations] if the land had not been registered, and shall be followed by a transfer in the prescribed form, and the expenses of and incidental to the preparation and execution by all parties other than the vendor of such assurance [conveyance *or* assignment] and transfer shall be borne by the purchaser.

Vendor to retain muniments (*b*).

XXXIII. THE VENDOR will retain all muniments of title relating to property (real or personal) not comprised

(*a*) See Precedent XLII., *infra*, p. 225, the first schedule to which may be compared with the stipulations referred to in this condition.

(*b*) There would seem to be little or no advantage in inserting this clause, except where the vendor is a trustee or mortgagee. See Vendor and Purchaser Act, 1874 (App. II. *infra*), s. 2, r. 5, and

in this sale, and will give to the purchaser [*on a sale in lots*—each purchaser] an acknowledgment of his right to production, and to delivery of copies of such of the said muniments as are not of record, and an undertaking [*or, if a trustee or mortgagee* –but not any undertaking or covenant] for safe custody thereof.

Custody of muniments on sale in lots, where some to be delivered over (*a*).

XXXIV. SUCH OF the muniments of title in the vendor's possession as relate to one lot and not to any other property (real or personal), will be delivered to the purchaser of that lot, and such of the muniments of title in the vendor's possession as relate to more than one lot and not to any other property (real or personal), will, after the sale of all the lots to which the same relate, be delivered to the largest purchaser in value of those lots, and meanwhile will be retained by the vendor. Every purchaser to whom any muniments relating to any other lot or lots shall be delivered, shall, if required, give to the respective purchasers of such other lots an acknowledgment of the right to production and delivery of copies, and an undertaking for safe custody, of such muniments. The vendor, or some person interested, will retain all other muniments, and give to the purchasers of the lots to which the same relate an acknowledgment of the right of such purchasers respectively to production and delivery of copies of such of the muniments retained as are not of record, without an undertaking for safe custody thereof. Every acknowledgment and undertaking under this condition shall be prepared by and at the expense of the

note thereto, as regards the reference in the clause to personal property.

(*a*) Where the land is registered and the land certificate includes several lots, such certificate would, under this condition, go to the largest purchaser in value. Apparently it should, after completion of the sale of all the lots to which it relates, be delivered to the registrar for destruction, and a condition to this effect might be added; but there is no settled practice or understanding upon the subject.

PRECEDENT III.

MISCELLANEOUS CLAUSES.

person to whom the same shall be given, and shall be perused on behalf of and executed by the giver at his own expense. Purchasers shall not be entitled to any other acknowledgment, undertaking, or covenant for production, delivery of copies, or safe custody of any document.

Consent of Court to be obtained, or the contract to be void.

XXXV. THE PURCHASERS [vendors] shall forthwith at their own cost apply for and endeavour to obtain the approbation of the Court to the present contract, and in case such approbation shall not be obtained before the —— day of ——, the present contract shall be void, and the expenses of and incidental to the preparation and execution of this agreement, and the preliminary negotiations, including the fees of the vendors' surveyor, and all other costs and expenses incurred or to be incurred by the vendors in respect of the premises, shall be paid by the purchasers.

Costs according to Act, to be paid by company (*a*).

XXXVI. THE COMPANY shall bear and pay all such costs, charges and expenses in relation to the sale and purchase as would, under the Lands Clauses Consolidation Act, 1845, be payable by them if the said lands had been taken by them compulsorily.

(*a*) On a sale by private contract to a railway or like company, see *Re Burdekin*, [1895] 2 Ch. 136.

IV.

CONVEYANCE *in* FEE *by a* VENDOR *seised in Fee* (*a*). PRECEDENT IV. IN FEE.

THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of, &c. [*vendor*] (*b*), of the one part, and C. D., of, &c. [*purchaser*], of the other part (*c*). Parties.

(*a*) As to land in a district where registration of title is compulsory, see the observations, *supra*, p. 83 *et seq.*

(*b*) If the vendor was married on or before the 1st of January, 1834, to a woman living at the date of the conveyance, she must join to release her dower, and there should be added here "and D. B. his wife." The case is now hardly possible, but the modifications adapted to it, being slight, and of interest to the student, are retained.

(*c*) Sometimes a recital of seisin (see the V. & P. Act, 1874 (App. II., *infra*), s. 2, r. 2) is added, as follows:—

"WHEREAS the said A. B. is seised of the hereditaments hereinafter granted for an estate of inheritance in fee simple in possession free from incumbrances, and he has agreed to sell the same to the said C. D. for the sum of £——. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of £——, this day paid by the said C. D. to the said A. B. (the receipt, &c.)." Recital of seisin. Witnesseth.

If the wife joins for the purpose mentioned in note (*b*), add immediately before the witnessing part "the said D. B. agreeing to join in these presents for the purpose and in manner hereinafter appearing."

PRECEDENT IV.

IN FEE.

Witnesseth.

Consideration.

Receipt.

Operative words.

Parcels.

Habendum.

WITNESSETH, that, in consideration of £—— to the said A. B. this day paid by the said C. D. for the purchase of the fee simple of the hereditaments hereinafter granted (the receipt whereof the said A. B. doth hereby acknowledge (*a*), he, the said A. B. AS BENEFICIAL OWNER (*b*), doth hereby grant (*c*) unto the said C. D., his heirs and assigns. ALL THOSE —— and hereditaments situate in the parish of ——, in the county of ——, delineated (*d*) on the plan in the margin of these presents, and specified in the schedule hereto (*e*), TO HOLD the premises UNTO and TO

(*a*) A receipt clause in the deed renders unnecessary an indorsed receipt, and *vice versâ*. See the Conv. Act, 1881 (App. IV., *infra*), ss. 54 to 56.

(*b*) As to the effect of these words, see the Act mentioned in the last preceding note, sect. 7.

(*c*) Add here if the wife joins for the purpose mentioned in note (*b*) on p. 133, *supra*, "and she the said D. B., with the concurrence of the said A. B., and for the purpose of releasing her right to dower, doth hereby release."

(*d*) *i.e.*, sketched or represented, by boundary lines or otherwise, in such a manner as to indicate the area of the land. See *Protheroe* v. *Tottenham, &c. Rail. Co.*, [1891] 3 Ch. 278. As to whether a purchaser is entitled to have the property conveyed to him by reference to a plan, see *Re Sansom and Narbeth's Contract*, [1910] 1 Ch. 741.

(*e*) See, as to the omission of the general words and estate clause, sects. 6 and 63 of the Conv. Act, 1881 (App. IV., *infra*). If the property be in a mineral district, the words "Together with the mines and minerals within and under the same" may be added. In the cases where it is supposed that the grantor may have some interest beyond what appears by the deed, the following form of the "estate clause," or some modification of it, should be inserted here:

Estate clause.

"AND all the estate, term of years, charge in respect of redeemed land-tax or otherwise, tithe or tithe rent-charge, interest and claim whatsoever of the said A. B., in, out of, or upon the same premises."

In conveyances on sale there can seldom be any occasion for the

THE USE of the said C. D., his heirs and assigns (*a*). [And it is hereby certified that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value, or the aggregate amount or value, of the consideration exceeds £500 (*b*).] IN WITNESS, &c. (*c*).

THE SCHEDULE above referred to.

PRECEDENT IV.

IN FEE.

Statement for purposes of stamp duty.

V.

CONVEYANCE *by a* MARRIED WOMAN *seised in Fee under the Old Law* (*d*).

PRECEDENT V.

BY MARRIED WOMAN SEISED IN FEE UNDER THE OLD LAW.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and D. B., his wife [*vendors*], of the one part, and

insertion of this clause, but in settlements where the settlor's title may not have been investigated, and voluntary conveyances, its insertion may sometimes be advantageous. See *Price* v. *John*, [1905] 1 Ch. 744.

(*a*) It has been common to insert a declaration that no widow of the purchaser shall be entitled to dower; but the practice is wrong, because, if the purchaser does not dispose of the property in his lifetime, and dies intestate, there is no reason why the widow's dower should be defeated in favour of the heir-at-law, even if a child, and certainly not if a more distant relative.

(*b*) Where the consideration does not exceed £500 and the conveyance is not a part of a larger transaction in respect of which the consideration exceeds that sum, this statement should be inserted for the purpose of avoiding the increased stamp duty otherwise payable under the Finance (1909-10) Act, 1910, sect. 73. Regard being had to sect. 4 (3) of this Act, it is clear that every conveyance must in future be stamped with one of the denoting stamps mentioned in that sub-section.

(*c*) This deed will have to be acknowledged by the vendor's wife, if she joins for the purpose mentioned, p. 133, *supra*, note (*b*).

(*d*) If the woman, having been married before the 1st of January, 1883, acquired her title to the property on or after that day, or if she was married on or after that day, the property will, under the

PRECEDENT V.

BY MARRIED WOMAN SEISED IN FEE UNDER THE OLD LAW.

C. D., of, &c. [*purchaser*], of the other part, WITNESSETH, that in consideration of £—— to the said A. B. and D. B. this day paid by the said C. D. for the purchase of the fee simple of the hereditaments hereinafter granted (the receipt whereof the said A. B. and D. B. do hereby acknowledge), she the said D. B. AS BENEFICIAL OWNER, with the concurrence of the said A. B., doth hereby grant and dispose of (*a*), and he, the said A. B. AS BENEFICIAL OWNER (*b*) doth hereby grant and confirm unto the said C. D. and his heirs [*parcels—supra*, p. 134], TO HOLD the premises UNTO and TO THE USE of the said C. D., his heirs and assigns for ever. [*Statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c. (*c*).

Parties.

Witnesseth.

Consideration.

Operative words.

Habendum.

To use of purchaser in fee.

THE SCHEDULE above referred to.

VI.

PRECEDENT VI.

BY APPOINTMENT AND GRANT IN FEE.

CONVEYANCE *by* APPOINTMENT, *and* GRANT *in* FEE SUBJECT *to a* LEASE. *Variations for* APPORTIONMENT *of the* RENT.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*vendor*], of the one part, and B., of, &c. [*purchaser*], of

Parties.

M. W. P. Act, 1882 (App. XII., *infra*), belong to her for her separate use, and be capable of being disposed of by her, as if she were a *feme sole*. In such a case the preceding Precedent might be used, and the husband could not be required to join for the purpose of obtaining his covenants for title, or otherwise. In all other cases this Precedent will be appropriate.

(*a*) See sect. 77 of the Fines and Recoveries Act, 1833.

(*b*) As to the effect of these words in implying covenants for title, see the Conv. Act, 1881 (App. IV., *infra*), s. 7 (particularly sub-s. 1 F. (3)).

(*c*) This deed will have to be acknowledged by the married woman, the vendor. But see the Conv. Act, 1882 (App. V., *infra*), s. 7.

PRECEDENT VI.

BY APPOINTMENT AND GRANT IN FEE.

the other part, WITNESSETH, that in consideration of £ — to the said A. this day paid by the said B., for the purchase of the fee simple of the hereditaments hereinafter appointed and granted (the receipt whereof the said A. doth hereby acknowledge), he the said A. in exercise of a power given to him by an indenture dated the —— day of —— (*a*), and expressed to be made between [*parties*], and of every other power enabling him in this behalf, doth hereby appoint (*b*), and by virtue of his estate and interest, and AS BENEFICIAL OWNER, doth hereby grant and confirm (*c*) unto the said B., his heirs and assigns,

Witnesseth.
Consideration.
Receipt.
Appointment.

(*a*) It was formerly usual to specify the mode of assurance more particularly; thus, "by an indenture of release grounded on a lease for a year;" *or*, "by an indenture of release made in pursuance of the Act for rendering a release as effectual for the conveyance of freehold estates as a lease and release by the same parties;" *or*, "by an indenture of feoffment perfected by livery of seisin;" or, "by an indenture of bargain and sale perfected by enrolment, and by a recovery suffered in pursuance of the same indenture," or the like. But the expression in the text is sufficient. The phrase "expressed to be" may be omitted when it is known that the instrument was executed by all the parties.

(*b*) In exercising a power, it is best to take the operative words given in the power. The power supposed in the text requires no formalities; but, in exercising a power which does require formalities, it is unnecessary to follow the usual course of making the witnessing part describe the intended mode of execution. The only advantage of that practice is to guide the persons seeing to the execution and attestation of the deed. If the deed (as in the text) does not state the formalities, attention should be called to them by a note in the margin of the draft. By the Law of Property Amendment Act, 1859 (22 & 23 Vict. c. 35), s. 12, a deed executed in the presence of and attested by two or more witnesses in the manner in which deeds are ordinarily executed is made valid as an execution of a power of appointment by deed or any writing not testamentary, although other formalities may have been required by the instrument creating the power; but in practice the formalities, if known, are usually adhered to.

(*c*) This Precedent may be used whenever the property stands limited to uses such that the vendor has a general power of

PRECEDENT VI.

BY APPOINTMENT AND GRANT IN FEE.

Grant.

Parcels.

ALL THAT messuage or farmhouse and farm with the several cottages and parcels of land belonging thereto, known as —— Farm, situate in the parish of ——, in the county of ——, particularly described in the first schedule hereto, and delineated on the map annexed to these presents and thereon coloured ——, such schedule and map being respectively extracts from the tithe commutation rentcharge apportionment for the said parish, and the map therein referred to (*a*) TO HOLD the premises

Habendum to purchaser in fee.

UNTO and TO THE USE of the said B., his heirs and assigns (*b*), subject to a lease thereof [with other hereditaments] made by an indenture dated the —— day of ——, 18—, to ——, for —— years from the —— day of ——, 18—, at the yearly rent of £——, but with the benefit of the [yearly sum of £—— as an apportioned (*c*) part of

Subject to lease.

appointment, and also an estate in fee subject to the power, and the conveyance is in fee simple. Where the grantee to uses is the same person as the *cestui que use*, the appointment and grant may properly be combined in one witnessing part, as in the text; but where that is not the case, two witnessing parts should be employed, as in the next Precedent.

(*a*) See parcels, *supra*, p. 134, and note (*d*).

(*b*) Unless there be any reason (as there very seldom is) to suppose that the power has been extinguished, the conveyance may be by appointment alone, but there is no great advantage in this course. There was no substantial objection, when the property stood limited to uses to bar dower in favour of the vendor, to taking the conveyance from him, as in Precedent IV., either reciting or not reciting his title; for the conveyance of his estate extinguished the power, or precluded him from exercising it. The usual objection to this method was that it left untouched the estate of the dower trustee; but this estate cannot be considered of more importance than that of trustees to preserve contingent remainders, and the latter was never got in; and see *Collard* v. *Roe*, 4 De G. and J. 525. The advantage of omitting the appointment is, that the reference to any anterior title is avoided, but any objections to such reference may be diminished by appointing with only a general reference to every power in the appointor.

(*c*) See p. 33, *supra*.

the] said rent, and of the covenants by the lessee, and conditions in the said indenture of lease contained [so far as the same relate to, or affect the said premises hereinbefore appointed and granted, regard being had to the apportionment aforesaid]. AND THE SAID A. retaining possession of the deeds and writings specified in the second schedule hereto, doth hereby acknowledge the right of the said B. to production and to delivery of copies thereof, and undertake for the safe custody thereof (*a*). [*Statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c.

PRECEDENT VI.

BY APPOINTMENT AND GRANT IN FEE.

Acknowledgment and undertaking as to documents of title.

THE FIRST SCHEDULE above referred to.

THE SECOND SCHEDULE above referred to.

VII.

CONVEYANCE *by* APPOINTMENT *and* GRANT *to* USES

PRECEDENT VII.

BY APPOINTMENT AND GRANT TO USES.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*vendor*], of the first part, B., of, &c. [*purchaser*], of the second part, and C., of, &c. [*trustee*], of the third part, WITNESSETH, that in consideration of £—— to the said A. this day paid by the said B. for the purchase of the fee simple of the hereditaments hereinafter appointed

Parties.

Witnesseth.

Consideration.

(*a*) As to this acknowledgment and undertaking, see the Conv. Act, 1881 (App. IV., *infra*), s. 9. It is assumed that A. retains not only the indenture by which his power of appointment was reserved, but also other documents relating to the property. If the acknowledgment and undertaking are intended to refer only to that indenture, the second schedule will of course not be needed. As a general rule, it is considered advisable that the acknowledgment and undertaking should be by a separate instrument, where they relate to documents not referred to in the conveyance. A precedent of such an instrument will be found *infra*.

PRECEDENT VII.

BY APPOINTMENT AND GRANT TO USES.

and granted (the receipt whereof the said A. doth hereby acknowledge), he the said A. in exercise of the power for this purpose given to him by an indenture dated the —— day of ——, and expressed to be made between [*parties*], and of every other power enabling him in this behalf,

Receipt.

Appointment.

doth hereby appoint (*a*) that ALL THOSE the —— and hereditaments hereinafter described and granted, shall henceforth go and remain to the uses hereinafter limited. AND

Witnesseth secondly.

THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, he the said A. AS BENEFICIAL OWNER doth hereby grant and confirm unto the said B. and his heirs

Grant.

[*parcels supra*, pp. 134, 138, &c.]. TO HOLD the premises

Habendum.

unto the said B. and his heirs, TO THE USES hereinafter limited. AND IT IS HEREBY AGREED AND DECLARED, that the appointment and grant hereinbefore contained, shall

Limitation to such uses as purchaser shall appoint; in default to purchaser for life; to trustee during life of purchaser, in trust for him; to purchaser in fee.

respectively operate and enure, TO SUCH USES, for such estates, and in such manner as the said B. shall by deed appoint; AND IN DEFAULT of and subject to any such appointment, TO THE USE of the said B. and his assigns during his life, without impeachment of waste; AND AFTER the determination of that estate by any means in his lifetime, TO THE USE of the said C., and his heirs during the life of the said B., in trust for him and his assigns; AND AFTER the determination of that estate, TO THE USE of the said B., his heirs and assigns, for ever (*b*).

Acknowledgment and undertaking as to documents of title.

AND THE SAID A., retaining [*acknowledgment and undertaking as to documents of title—supra*, p. 139; *statement for purposes of stamp duty, if appropriate supra*, p. 135]. IN WITNESS, &c.

THE SCHEDULE above referred to.

(*a*) See p. 137, nn. (*a*) and (*b*), *supra*.

(*b*) These are the limitations to bar dower, which were in use when the purchaser had been married before 1st January, 1834, to a woman living at the date of the conveyance. They are now obsolete; but, in other respects the Precedent is appropriate whenever the conveyance is to be made by appointment and grant to uses.

VIII.

Conveyance *by* Co-parceners (*a*).

Precedent VIII.

By co-parceners.

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. [*vendors*], of the one part, and

(*a*) This Precedent is given as a specimen of a conveyance by several vendors, as by co-parceners, tenants in common, joint tenants, or tenant for life and reversioner. The recitals of such a conveyance should show the precise interest of each conveying party, because his implied covenants for title (see the Conv. Act, 1881, App. IV., s. 7) must be limited according to the extent of his interest.

In a conveyance by co-parceners, or by tenants in common where each conveying party has a distinct share of the property, the express covenants of each party were usually made to extend to such share only. Similarly, in a conveyance by tenant for life and reversioner, the covenants of the former have been limited to the life estate, and those of the latter to the reversion; and care should be taken that the implied covenants are similarly limited. This as regards tenants in common may be effected as in the text of the present Precedent, and also as regards tenant for life and reversioner, with the aid of Precedent XVI., p. 157, *infra*.

As joint tenants do not take distinct shares in the property, their covenants cannot be limited by reference to their respective shares, and it would seem that in general they ought to enter into joint and several covenants applicable to the entirety (*National Society for the Distribution of Electricity by Secondary Generators* v. *Gibbs*, [1900] 2 Ch. 280). If this be objected to, then the best plan appears to be to frame the deed so that several covenants may be either expressed or implied on the part of each joint tenant, and to add a proviso limiting the total liability of each covenantor for damages to a sum specified, which will usually be equal to his share of the purchase-money. See the note at the end of this Precedent for the mode of implying such limited covenants. A similar form of covenants may be adopted where the vendors have several interests in, but not distinct shares of, the property sold; *e.g.*, where real estate devised in trust for sale is sold with the concurrence of the persons absolutely entitled to the whole or part of the proceeds of sale, in which

PRECEDENT VIII.

BY CO-PARCENERS.

E. F., of, &c. [*purchaser*], of the other part. WHEREAS G. B., late of, &c., died on the —— day of ——, 1860, intestate, leaving his only surviving child, the said A. B., and his grandson, the said C. D., who is the eldest son of H. D., the late wife of J. D. (which said H. D. was the only other child of the said G. B., and died on the —— day of ——, 1858), his co-heirs at law. AND WHEREAS the said G. B. was at his death seised in fee simple of the hereditaments hereinafter granted: AND WHEREAS the said A. B. and C. D. have agreed with the said E. F. for the sale to him of the said hereditaments, in fee simple in possession, free from incumbrances, for the sum of £—— (*a*). NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement (*b*), and in consideration of £—— this day paid to the said A. B. and C. D. by the said E. F. (the receipt whereof the said A. B. and C. D. hereby acknowledge), they, the said A. B. and C. D., according to their several and respective shares, DO and EACH of them as BENEFICIAL OWNER of one equal

Recital of death of intestate and heirship of vendors.

That intestate died seised in fee.

Contract for sale.

Witnesseth.

Consideration.

Receipt.

Operative words.

case such beneficial owners have generally been required to covenant for title, though it appears that, if the sale be made under a decree of the Court, the beneficiaries cannot be compelled to concur in the conveyance for the purpose of covenanting for title. See *Cottrell* v. *Cottrell*, L. R, 2. Eq. 330; and as to the frame and extent of covenants for title generally before the Act, see Davidson's Prec. Con. vol. i., 5th ed., pp. 84 *et seq.*

(*a*) The following recital might be substituted for the preceding recitals:—

"AND WHEREAS the said A. B. and C. D. are seised of the hereditaments hereinafter granted in fee simple in possession as [co-parceners] tenants in common in equal shares, and they have agreed to sell the same free from incumbrances to the said E. F. for the sum of £——."

(*b*) These words have a clear purpose and effect and are better retained; see *Ex parte Dawes*, 17 Q. B. D. 275.

undivided moiety (*a*) DOTH hereby grant unto the said E. F., his heirs and assigns [*parcels—supra*, pp. 134, 138, &c.]. To HOLD the premises UNTO and TO THE USE of the said E. F., his heirs and assigns (*b*). [*Statement for purposes of stamp duty, if appropriate—supra*, p. 135.] IN WITNESS, &c. (*c*).

PRECEDENT VIII.

BY CO-PARCENERS.

THE SCHEDULE above referred to.

(*a*) The following is another form which may be used where the title recited is more complex :—

"As and according to and as beneficial owners of the estates, shares, and interests to which they respectively claim to be entitled as hereinbefore is mentioned, and as to all other (if any) the estates, shares and interests which they respectively are entitled to or can dispose of."

Operative words of assurance by tenants in common.

(*b*) If the grantors were joint tenants the words "according to their several and respective shares," would be omitted, and for the words immediately following, the words "AS BENEFICIAL OWNERS do and each of them separately as BENEFICIAL OWNER doth," would be substituted, and the following proviso might be added :—

"PROVIDED ALWAYS, that the total amount recoverable from each of them, the said A. B. and C. D., or from his heirs, executors, or administrators by way of damages, in respect of any breach or breaches of the respective covenants implied on the part of them, the said A. B. and C. D. respectively, shall not exceed the sum of £——."

Proviso limiting liability under covenants for title.

(*c*) Where one of the vendors is an infant, and it is not desired, on the ground of expense or otherwise, to proceed in respect of his share under the Settled Land Act, 1882 (App. VII., *infra*), ss. 59 and 60, the infant may be made a party to the conveyance, the other vendors covenanting for his execution upon attaining twenty-one, and his share of the purchase-money being retained in the meantime

IX.

PRECEDENT IX. — TO A SUB-PURCHASER.

CONVEYANCE *to a* SUB-PURCHASER.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*vendor*], of the first part, B., of, &c. [*original purchaser*], Parties. by the purchaser. The following variations of the Precedent in the text are adapted to the case mentioned:—

Recital that infant is made a party; —of agreement by the other parties for covenant.

"AND WHEREAS the said [*infant*] is made a party to these presents to the intent that he shall execute the same if and when he attains the age of twenty-one years. AND WHEREAS it has been agreed that the parties hereto of the —— parts shall enter into the covenant hereinafter on their parts contained, and that these presents shall contain the agreement and declaration hereinafter appearing."

Contract by the other parties that infant shall execute at 21.

"And the said parties hereto of the —— parts do, and as separate covenants also each of them doth, hereby covenant with the said E. F. that the said [*infant*] if and when he attains the age of twenty-one years, or in the event of his death under that age, his heirs shall, at the request of the said E. F., his heirs or assigns, and at the cost of the parties hereto other than the said E. F., or of some or one of them, execute these presents or such other instrument as shall be necessary or proper, and as the said E. F., his heirs or assigns, shall require for the purpose of confirming these presents, and the assurance by the said [*infant*] purported to be hereby made.

Agreement as to infant's share of the purchase-money meanwhile.

And it is hereby agreed and declared that the sum of £ — , being the share of the said [*infant*] in the said purchase price of £—— shall remain in the hands of the said E. F., and bear interest at the rate of £—— per cent. per annum, and that the same sum of £—— and the interest thereon shall be paid to the said [*infant*] or his heirs upon his or their executing these presents, or such other instrument as aforesaid, pursuant to the covenant in that behalf hereinbefore contained."

of the second part, and C., of, &c. [*sub-purchaser*], of the third part. WHEREAS the said A. is seised of the hereditaments hereinafter granted in fee simple in possession free from incumbrances. AND WHEREAS the said A. lately agreed with the said B. for the sale to him of the said hereditaments for the sum of £100, but no conveyance thereof has been made to the said B. AND WHEREAS the said B. has agreed with the said C. for the sale to him of the said hereditaments at the price of £150. Now THIS INDENTURE WITNESSETH that in pursuance of the said agreements and in consideration of the sum of £150 this day paid by the said C. as to £100 part thereof to the said A. at the request of the said B. (the receipt whereof the said A. doth hereby acknowledge), and as to £50, the residue thereof, to the said B. (the receipt whereof he doth hereby acknowledge), he, the said A., as beneficial owner at the request of the said B., doth hereby grant, and he, the said B., as beneficial owner, doth hereby grant and confirm unto the said C. and his heirs [*parcels*, pp. 134, 138], TO HOLD the premises UNTO and TO THE USE of the said C., his heirs and assigns. [*Acknowledgment and undertaking by A. as to title deeds if required, supra*, p. 139; *statement for purposes of stamp duty, if appropriate, supra*, p. 135.]

THE SCHEDULE above referred to.

PRECEDENT IX.

TO A SUB-PURCHASER.

Recital of seisin and of contract for sale,

—and of contract for sub-sale.

Witnesseth.

Consideration

Receipt.

Operative words.

Habendum.

X.

CONVEYANCE *by* MORTGAGOR *and* MORTGAGEE (*a*).

PRECEDENT X.

BY MORTGAGOR AND MORTGAGEE.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*mortgagee*], of the first part, B., of, &c. [*mortgagor and vendor*], of the second part, and C., of, &c. [*purchaser*],

Parties.

(*a*) Compare the third of the short forms of Deeds in Schedule IV. to the Conv. Act, 1881 (App. IV., *infra*).

PRECEDENT X.

BY MORTGAGOR AND MORTGAGEE.

of the third part. WHEREAS, by an indenture dated the —— day of ——, and expressed to be made between the said B., of the one part, and the said A. of the other part, in consideration of £—— by the said A. paid to the said B., the said B. did grant the hereditaments hereinafter granted [together with other hereditaments], unto and to the use of the said A., his heirs and assigns, subject to a proviso in the indenture now in recital contained for redemption of the same hereditaments on payment by the said B., his heirs, executors, administrators, or assigns, unto the said A., his executors, administrators, or assigns, of the sum of £——, with interest for the same after the rate therein mentioned on the day thereby appointed.

Recital of mortgage.

Contract for sale.

AND WHEREAS the said B. has agreed with the said C. for the sale to him of the said hereditaments, in fee simple in possession, free from incumbrances, for the sum of £——, AND WHEREAS the said sum of £—— is now owing to the said A., but all interest for the same has been paid down to the date of these presents (*a*), and it has been agreed that the sum of £—— part of the said purchase-money shall be paid to the said A. in satisfaction of the said mortgage debt (*b*), and that he shall join in these presents in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreements, and in consideration of £——, to the said A. this day paid by the said C. at the request of the said B. (the receipt whereof the said A. doth hereby acknowledge), and of £—— to the said B. this day paid by the said C. (the payment and receipt respectively of which said sums of £—— and £——, making together the said purchase-money of £——, the said B. doth hereby acknow-

That mortgage money is still due, and is to be paid off out of purchase-money.

Witnesseth.

Consideration.

Receipt.

(*a*) If the debt is not to be fully discharged insert after the words "the said sum of £——," the words "with current interest for the same," and omit the statement that all interest has been paid.

(*b*) Or, if the case be so, "towards discharge of the principal monies and interest owing to him as aforesaid."

PRECEDENT X.

BY MORTGAGOR AND MORTGAGEE.

ledge), he the said A., AS MORTGAGEE, by the direction of the said B., doth hereby grant, and he the said B., AS BENEFICIAL OWNER, doth hereby grant and confirm unto the said C. and his heirs [*parcels*—pp. 134, 138, &c.], TO HOLD the premises UNTO and TO THE USE of the said C., his heirs and assigns, discharged from all principal monies and interest secured by, and from all claims under, the hereinbefore recited indenture. AND THE SAID B. doth hereby acknowledge the right of the said C. to production of the hereinbefore recited indenture, and to delivery of copies thereof, and undertake for the safe custody thereof (*a*). [*Statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c.

Operative words.

Habendum.

Acknowledgment and undertaking as to documents of title.

THE SCHEDULE above referred to.

(*a*) See *supra*, p. 139, n. (*a*). This clause will of course be omitted if the mortgage deed be handed over. And where the mortgage was made on or after the 1st of January, 1882, the mortgagee might be compelled under sect. 16 of the Conv. Act, 1881 (App. IV., *infra*), to produce the deed, even without an express acknowledgment, if the purchaser be within the definition in sect. 2 (vi.) of the word *mortgagor*, which seems somewhat doubtful.

When the mortgage debt is not fully paid off, the clause will take the following form:—

"And the said A. doth hereby acknowledge the right of the said C. to production of the hereinbefore recited indenture, and to delivery of copies thereof, and the said B. doth hereby covenant with the said C. that he the said B., his heirs or assigns, will after the hereinbefore recited indenture shall have come into his or their possession, upon the request and at the cost of the said C., his heirs or assigns, execute and deliver to him or them a proper statutory undertaking for the safe custody thereof, and will in the meantime keep the hereinbefore recited indenture or cause the same to be kept safe, whole, uncancelled and undefaced, unless prevented from so doing by fire or other inevitable accident."

There is some difficulty in relation to the undertaking in such a case, because the indenture will probably remain in the actual

XI.

PRECEDENT XI.

OF REGISTERED FREEHOLDS NOT INTENDED FOR REGISTRATION.

CONVEYANCE *in fee of* REGISTERED FREEHOLDS NOT *intended for* REGISTRATION (*a*).

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*vendor*], of the first part, B., of, &c. [*incumbrancer*], of the second part, and C., of, &c. [*purchaser*], of the third part. WHEREAS the said A. is the registered proprietor of the hereditaments hereinafter granted, with an absolute title [*or* with a qualified title subject to the qualifications set forth in the schedule hereto, and] subject to the incumbrance following, that is to say: a charge for £——, with interest at the rate of £—— per cent. per annum, of which the said B. is the registered proprietor. AND WHEREAS the said A. has agreed with the said C. for the sale to him of the said hereditaments in fee simple in possession [subject to the qualifications set forth in the said schedule, but] free from incumbrances, for the sum of ——*s.* (*b*). AND WHEREAS all interest upon the said sum of £—— has been paid to the said B. down to the date

Parties.

Recital of registered title.

Contract for sale.

That charge is to be paid off out of

possession of the mortgagee. In the case of a mortgage made on or after the 1st January, 1882, it may be thought that by virtue of the Conv. Act, 1881, s. 16, if not otherwise, the indenture must be considered as in the constructive possession or control of the mortgagor, but this view has not been generally accepted in the profession; and it should be borne in mind that an undertaking by a person not in possession of the document would presumably not operate under the statute, and might create a more onerous liability than that imposed by the statute.

(*a*) See *supra*, pp. 97—99.

(*b*) If A. is registered with a possessory title, or with a qualified title, but the sale is not made subject to any qualifications, it is apprehended that the following recitals should be substituted for those above:—

Recital of seisin subject

"WHEREAS the said A. is seised of the hereditaments

of these presents, and it has been agreed that the said sum of £—— shall be paid off out of the said purchase-money, and that the said B. shall join in these presents in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreements, and in consideration of £—— to the said B. this day paid by the said C. at the request of the said A. (the receipt whereof the said B. doth hereby acknowledge), and of £—— to the said A. this day paid by the said C. (the payment and receipt respectively of which said sums of £—— and £——, making together the said purchase-money of £——, the said A. doth hereby acknowledge), he, the said B., as mortgagee, by the direction of the said A., doth hereby grant, and he, the said A., AS BENEFICIAL OWNER, doth hereby grant and confirm unto the said C. and his heirs, ALL [&c., *parcels*—pp. 134, 138, being [part of] (*a*) the registered land comprised in the title No. ——, in the parish of ——, in the district of ——, and county of ——], TO HOLD the premises UNTO and TO THE USE of the said C., his heirs and assigns [subject to the qualifications set forth in the schedule hereto, but] discharged from all principal monies and interest secured by and from all claims under the said registered charge,

PRECEDENT XI.

OF REGISTERED FREEHOLDS NOT INTENDED FOR REGISTRATION.

purchase-money.

Witnesseth.

Receipt.

Operative words.

Parcels.

Habendum.

---

hereinafter granted for an estate in fee simple in possession, subject to the incumbrance following (that is to say): a charge for £——, with interest at the rate of £—— per cent. per annum, of which the said B. is the registered proprietor. AND WHEREAS the said A. is registered as the proprietor of the said hereditaments, with a possessory [qualified] title. AND WHEREAS the said A. has agreed with the said C. for the absolute sale to him of the said hereditaments in fee simple, free from incumbrances, for the sum of £——."

to registered charge;

—of registration with possessory or qualified title;

—of agreement for sale.

(*a*) A simple reference to the register will often suffice.

PRECEDENT XI.

OF REGISTERED FREEHOLDS NOT INTENDED FOR REGISTRATION.

and all liability in respect thereof. AND it is hereby agreed and declared that the covenant herein on the part of the said A., by statute implied for further assurance of the said premises, shall extend to the making and doing of every assurance and thing necessary for enabling the said C. to be registered as proprietor of the said premises with an absolute [possessory] title. AND the said A. doth hereby appoint the said C., his heirs and assigns, the attorney, or attorneys, of him the said A., in his name and on his behalf, to execute and do every or any such assurance and thing as aforesaid. [*Acknowledgment and undertaking as to documents of title if required, supra*, p. 147; *statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c.

Extension of covenant for further assurance of land to be registered.

Appointment of purchaser as attorney to execute further assurances.

THE SCHEDULE above referred to.

XII.

PRECEDENT XII.

BY MORTGAGEE.

CONVEYANCE *by a* MORTGAGEE *under a* POWER OF SALE, THE MORTGAGOR NOT *being a* PARTY.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*mortgagee*], of the one part, and B., of, &c., widow [*purchaser*], of the other part. WHEREAS, &c. [*Recite the mortgage ut supra*, p. 146, *and* (*except where the mortgage contains no express power of sale, such power being supplied by the statutory provisions of either* 23 *&* 24 *Vict. c.* 145, *Part II., or the Conv. Act*, 1881, *Appendix IV., infra*) *recite also the power to sell and convey, the power to give receipts, and the clauses, if any, protecting the purchaser against defects in a due exercise of the power, verbatim,* or *as on* p. 152, *infra, without the clause restrictive of the power of sale, and without the trusts of the purchase-money.*] AND WHEREAS the said A., in exercise of the said power of sale [*or, if it be the fact,* in

Parties.

Recital of mortgage,

—and of the contract for sale.

exercise of the power for that purpose given to or vested in him as such mortgagee as aforesaid by the Statute 23 & 24 Vict. c. 145, *or* the Conveyancing and Law of Property Act, 1881] has agreed to sell to the said B., at the price of £——, the fee simple in possession of the said hereditaments hereinafter granted. Now THIS INDENTURE WITNESSETH, that for effectuating the said sale, and in consideration of £—— this day paid to the said A. by the said B. (the receipt whereof the said A. doth hereby acknowledge) HE, the said A., AS MORTGAGEE, doth hereby grant unto the said B., her heirs and assigns [*parcels*, pp. 134, 138, &c.], TO HOLD the premises UNTO and TO THE USE of the said B., her heirs and assigns for ever, DISCHARGED from all equity of redemption and claims under the hereinbefore recited indenture (*a*). [*Statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c.

PRECEDENT XII.

BY MORTGAGEE.

Witnesseth.

Receipt.

Habendum.

To use of purchaser in fee discharged from the mortgage debt.

THE SCHEDULE above referred to.

XIII.

CONVEYANCE *by the* HEIR *and* EXECUTORS *of a* MORTGAGEE *on a* SALE *under a* POWER *of* SALE.

PRECEDENT XIII.

BY HEIR AND EXECUTORS OF MORTGAGEE.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. [*heir-at-law of mortgagee*] (*b*), of the first part, C. D., Parties.

(*a*) A mortgagee formerly covenanted only that he had not incumbered the property, and his implied covenant under sect. 7 (1), F. of the Conv. Act, 1881 (App. IV., *infra*), is to the same effect, but as the purchaser obtains the benefit of the absolute covenants by the mortgagor contained in the mortgage deed, he is in a better position, if the mortgagor be not a party, than he would be if the mortgagor joined in the conveyance.

(*b*) The statutory power to convey given to the personal representative of a mortgagee, by sect. 4 of the V. & P. Act, 1874 (App. II.,

PRECEDENT XIII.

BY HEIR AND EXECUTORS OF MORTGAGEE.

of, &c., and E. F., of, &c. [*executors of mortgagee and vendors*], of the second part, and G. H., of, &c. [*purchaser*], of the third part. WHEREAS, by an indenture dated the —— day of ——, 1870, &c. [*recital of the mortgage, ut supra*, p. 146. *Recite also, the power to sell and convey verbatim, to the extent indicated in Precedent XII., or proceed thus:*—"AND it was by the said indenture provided that it should be lawful for the said [*mortgagee*], his executors, administrators, or assigns, in certain events, to sell and dispose of the said hereditaments, and that, on a sale by the executors or administrators of the said [*mortgagee*], the heirs of the said [*mortgagee*] should convey the legal estate as the said executors or administrators should direct (*a*), and that the receipt of the said [*mortgagee*], his executors, or administrators, should be a sufficient discharge to the purchaser, and that the sale should be good as to a purchaser whether the events had or had not happened on which the power of sale was to arise, and notwithstanding any impropriety or irregularity in the sale."] AND WHEREAS the said [*mortgagee*] duly executed his will dated the —— day of ——, 1870, and thereby appointed the said C. D. and E. F. executors thereof, but did not thereby devise the legal estate (*b*) in the said heredita-

Recital of mortgage;

—of will and death of mortgagee;

infra), did not apply to a conveyance on sale under the power of sale in the mortgage; *Re White's Mortgage*, W. N. 1881, p. 115, 29 W. R. 820. However, on a sale by the executors of a mortgagee dying after the 31st December, 1881, the conveyance by the heir is not necessary, as the estate vests in the executors, who can convey it. See the Conv. Act, 1881 (App. IV., *infra*), s. 30 (by which s. 4 of the V. & P. Act, 1874, is repealed), and cf. sect. 21, and sect. 2 (vi.).

(*a*) This clause would not be referred to if the mortgagee died after the 31st December, 1881 (see the preceding note).

(*b*) As to what words are sufficient to pass the legal estate in mortgaged hereditaments, see 1 Jarm. Wills, 5th ed., pp. 647 *et seq.*; and the cases of *Lewis* v. *Matthews*, L. R. 2 Eq. 177; *Re Steven's Will*, L. R. 6 Eq. 597; *Martin* v. *Laverton*, L. R. 9 Eq. 563; *Re*

PRECEDENT XIII.

BY HEIR AND EXECUTORS OF MORTGAGEE.

ments, and died on the —— day of ——, 1874, leaving the said A. B. his heir-at-law, and without having revoked or altered his said will, and the same was proved by the said C. D. and E. F. in the —— Registry of the Court of Probate, on the —— day of ——, 1874 (*a*). AND WHEREAS the said C. D. and E. F., in exercise of the said power of sale, have agreed with the said G. H. for the sale to him of the said hereditaments, in fee simple in possession free from incumbrances, at the price of £——. NOW THIS INDENTURE WITNESSETH, that for effectuating the said sale, and in consideration of £—— to the said C. D. and E. F. this day paid by the said G. H. (the receipt whereof the said C. D. and E. F. hereby acknowledge), the said A. B., AS TRUSTEE and by the direction of the said C. D. and E. F., as executors of the said [*mortgagee*] doth hereby grant, and they, the said C. D. and E. F., AS MORTGAGEES and as PERSONAL REPRESENTATIVES of the said [*mortgagee*] do, and each of them doth, hereby grant and release unto the said G. H.

—of contract for sale.

Witnesseth.

Receipt.

Habendum.

Packman and Moss, 1 Ch. D. 214; *Re Brown and Sibly's Contract*, 3 Ch. D. 156; *Re Smith's Estate*, 4 Ch. D. 70; and *Re Bellis's Trusts*, 5 Ch. D. 504. The absence of such a devise would be of course immaterial under the circumstances referred to in the two last preceding notes.

(*a*) The recital is applicable to wills proved at any time from 11th January, 1858, when the Court of Probate Act, 1857 (20 & 21 Vict. c. 77), came into operation, up to 1st of November, 1875, when the Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), came into operation. Before the former date the probate would be in the proper Ecclesiastical Court, usually the Prerogative Court of Canterbury, and must be recited accordingly. From the latter date the jurisdiction of the Probate Court has been transferred to the Probate, Divorce, and Admiralty Division of Her Majesty's High Court of Justice (usually referred to in testamentary matters as "the Probate Division of the High Court of Justice"), and the description of the Court in the recital must be altered accordingly, or the probate may be recited as "in the —— Registry" simply, it being a matter of necessity that the Registry referred to is that of Probate.

PRECEDENT XIII.

BY HEIR AND EXECUTORS OF MORTGAGEE.

Parties.

and his heirs [*parcels*, pp. 134, 138, &c.] TO HOLD the premises UNTO and TO THE USE of the said G. H., his heirs and assigns, discharged from all equity of redemption and claims under the said indenture of the —— day of —— (*a*). [*Statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c.

THE SCHEDULE above referred to.

PRECEDENT XIV.

IN FEE OF AN EQUITY OF REDEMPTION.

XIV.

CONVEYANCE *in* FEE *of an* EQUITY *of* REDEMPTION (*b*).

Parties.

Recital of the mortgage, the state of the debt, and the contract for sale.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*vendor*], of the one part, and B., of, &c. [*purchaser*], of the other part. WHEREAS, &c. [*Recite the mortgage and the state of the mortgage debt, supra*, p. 146.] AND WHEREAS the said A. has agreed to sell to the said B. the fee simple in possession of the said hereditaments hereinafter granted, subject to the payment of the principal monies and interest intended to be secured by the hereinbefore recited indenture (*c*), but free from other incum-

(*a*) See as to what covenants are implied under this conveyance, the Conv. Act, 1881, s. 7 (1) (App. IV., *infra*).

(*b*) An equity of redemption, which is merely the right to call for a conveyance of the legal estate on payment of the mortgage debt, is usually conveyed in the same manner as a legal estate. It has been usually considered that, if the vendor was married before the 1st of January, 1834, to a woman living at the time of the sale, and the mortgage was subsequent to the marriage, the wife should join in the conveyance. See Davidson's Prec. Conv. 4th ed. vol. ii. pt. i. p. 450, in note; but see now *Dawson* v. *Bank of Whitehaven*, 6 Ch. D. 218, and compare *Meek* v. *Chamberlain*, 8 Q. B. D. 31.

(*c*) As the purchaser takes subject to the mortgage debt, he should ascertain by enquiry of the mortgagee what is the actual state of the debt. The enquiry should be made in writing, and it should be stated that the enquiry is made on behalf of an intending

PRECEDENT XIV.

IN FEE OF AN EQUITY OF REDEMPTION.

brances, at the price of £——. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement and in consideration of £—— to the said A. this day paid by the said B. (the receipt whereof the said A. doth hereby acknowledge), HE the said A., AS BENEFICIAL OWNER, doth hereby grant unto the said B., his heirs and assigns [*parcels*, pp. 134, 138, &c.], TO HOLD the premises UNTO and TO THE USE of the said B., his heirs and assigns, SUBJECT to the payment of the principal monies and interest owing on the security of the hereinbefore recited indenture. AND THE SAID B. doth hereby covenant with the said A. that he the said B., his heirs, executors, administrators, or assigns will pay to the said [*mortgagee*], his executors, administrators, or assigns, the said principal sum of £——, and all interest due and to become due for the same as and when payment thereof respectively shall be lawfully demanded by him or them, and will keep the said A., his heirs, executors, and administrators indemnified against the payment thereof or any part thereof respectively, and against all proceedings, costs, damages, claims, demands, and liability for non-payment thereof respectively (*a*). [*Statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c. (*b*).

Witnesseth.

Consideration.

Receipt.

Habendum.

Subject to the mortgage.

Covenant by purchaser to pay mortgage debt and indemnify vendor.

THE SCHEDULE above referred to.

purchaser. The purchaser will be bound to indemnify the vendor against the mortgage debt (*Waring* v. *Ward*, 7 Ves. 337), and therefore no covenant to that effect is necessary, but such a covenant is usual. If the vendor should be sued on his covenant in the mortgage, he will acquire a new right to redeem. See *Kinnaird* v. *Trollope*, 39 Ch. D. 636. But this right, necessarily arising out of the purchaser's default, does not constitute any injury to him.

(*a*) For limitations to uses, see *supra*, p. 140. If they are used, the reference to the mortgage debt should immediately precede the words, "To such uses."

(*b*) Where the land is situate in a district in which registration is compulsory, it may be well to register the title under the con-

XV.

PRECEDENT XV.

BY MORTGAGOR TO MORTGAGEE.

CONVEYANCE *of an* EQUITY *of* REDEMPTION BY *the* MORTGAGOR TO *the* MORTGAGEE.

Parties.

Recital of mortgage and contract;

—that mortgage money owing, and to be retained out of purchase-money,

—and that release should be given (*a*).

Witnesseth.

Consideration.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*mortgagor*], of the one part, and B., of, &c. [*mortgagee*], of the other part. WHEREAS, &c. [*recital of mortgage and of contract of sale, ut supra,* p. 146]. AND WHEREAS the said sum of £—— is owing to the said B., but all interest for the same has been paid down to the date of these presents, and upon the treaty for the said sale, it was agreed that the said sum of £—— should be retained by the said B. out of the said purchase-money, and that he should give such release as hereinafter is contained. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreements, and in consideration of £—— to the said A. this day paid by the said B., and making together with the sum of £—— retained by the said B. as aforesaid the total purchase-money of £—— (the receipt of which sum of £—— so paid as aforesaid the said A. doth hereby acknowledge), and of the release hereinafter on the part of the said B. contained, he the said A., as BENEFICIAL OWNER, doth hereby grant and release unto the said B., his heirs and assigns [*parcels,* pp. 134, 138], TO HOLD the premises UNTO and TO THE USE of the said B., his heirs and assigns, for ever, DISCHARGED from all equity of redemption and claims under the hereinbefore recited indenture. AND in pursuance of the said agreement in this behalf, and in consideration of the premises, the said B. doth hereby release the said A.,

Receipt.

Operative words.

Habendum.

Release from mortgage debt.

veyance, but the case is not within the compulsory provisions of the Land Transfer Act, 1897, inasmuch as the conveyance does not pass the legal estate. See *supra*, p. 87.

(*a*) This is sometimes given by a separate instrument.

his heirs, executors, and administrators, from the said sum of £—— and the interest henceforth to become due for the same, and from all claims and demands in respect thereof, or otherwise under the hereinbefore recited indenture. PROVIDED ALWAYS, nevertheless, and the said B. doth hereby declare, that the said sum of £——, and the interest henceforth to become due thereon, shall be considered and kept on foot as a subsisting charge upon the said premises hereinbefore granted and released for the benefit of the said B., his heirs and assigns, and as a protection to them against all mesne incumbrances, charges, and estates, if any such there be. [*Statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c.

PRECEDENT XV.

BY MORTGAGOR TO MORTGAGEE.

Proviso keeping alive the mortgage (*a*).

XVI.

CONVEYANCE *under a* POWER *of* SALE *in a* SETTLEMENT (*b*).

PRECEDENT XVI.

UNDER A POWER OF SALE IN A SETTLEMENT.

THIS INDENTURE, made, &c., BETWEEN A., of, &c., and B., of, &c. [*vendors, donees of the power of sale*], of

Parties.

(*a*) Where the mortgagor is in embarrassed circumstances, or the legal estate may be outstanding, it will be prudent to introduce this declaration. But it appears to be settled that apart from such a declaration the mortgage will be considered as kept alive for the protection of the purchaser unless he shows a clear intention to merge it for all purposes: See *Adams* v. *Angell*, 5 Ch. D. 634; *Thorne* v. *Cann*, [1895] A. C. 11; *Crosbie-Hill* v. *Sayer*, [1908] 1 Ch. 866; *Re Gibbon*, [1909] 1 Ch. 367.

(*b*) Sect. 56 of the Settled Land Act, 1882 (App. VII., *infra*), preserves intact all the powers of a settlement exerciseable by a tenant for life, or by trustees with his consent, or otherwise; but if they conflict with the powers given by the Act to the tenant for life, the latter are to prevail, and the consent of the tenant for life, or if several persons constitute together the tenant for life for the purposes of the Act, then (under the Settled Land Act, 1884, App. VIII., *infra*, sect. 6, sub-sect. (2)) of one of these persons, is made necessary to the exercise by the trustees of the settlement powers. It may be noticed here that, under sect. 33, money in the

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the first part, C., of, &c. [*tenant for life*], of the second part, and D., of, &c. [*purchaser*], of the third part. WHEREAS, by an indenture dated the —— day of ——, and expressed to be made between [*parties*] (being a settlement made in consideration of the marriage shortly afterwards solemnized between the said —— and ——), divers hereditaments, including the hereditaments hereinafter appointed, were limited to uses which have failed or determined by the death of the said —— [*a prior tenant for life with remainder to his first and other sons in tail*], without issue, and subject thereto to the use of the said C. and his assigns for his life without impeachment of waste with divers remainders over; and by the said indenture it was provided that [*recite literally the power to sell, to revoke the old and appoint new uses, and to give receipts to purchasers; or proceed thus, with variations according to circumstances:* "It should be lawful for the said A. and B., with the consent of the said C., to be testified by writing under his hand and seal, to sell the said hereditaments thereby limited, or any of them, and for the purpose of effectuating such sale, with the consent aforesaid, to revoke the uses thereby declared of the hereditaments so sold, and to appoint the same to the purchasers or as they should direct; and it was thereby also declared that the receipts of the said A. and B. for the purchase-money should be sufficient discharges to purchasers"] (*a*). AND WHEREAS the said A. and B. in exercise of the said power of sale, and with the consent of the said C. (*b*), have agreed with the said D. for the sale

Recital of the settlement;

—of the contract for sale.

hands of trustees under the powers of a settlement may be applied in the same manner as capital money arising under the Act, as to which see Parts VI. and VII. of the Act, and sects. 34 and 36.

(*a*) Of course, this recital will be varied according to the terms of the power; or the deed may be framed without recitals, like Precedent VI., *supra*, p. 136.

(*b*) It is usual to express the manner of testifying consent; but see *supra*, p. 137, n. (*b*). Observe that, as noted above, the consent

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UNDER A POWER OF SALE IN A SETTLEMENT.

to him of the said hereditaments hereinafter appointed, in fee simple in possession, free from incumbrances, for the sum of £——. NOW THIS INDENTURE WITNESSETH, that, for effectuating the said sale, and in consideration of £—— to the said A. and B. this day paid by the said D. (the receipt whereof the said A. and B. do hereby acknowledge), and in exercise of the said power to them given by the hereinbefore recited indenture, and of every other power enabling them, they the said A. and B., AS TRUSTEES, and with the consent and by the direction of the said C., directing as BENEFICIAL OWNER (*a*), do hereby revoke all the uses by the hereinbefore recited indenture limited, so far as relates to the hereditaments hereinafter appointed, and do hereby appoint (*b*), that [*parcels*, pp. 134, 138, &c.] shall henceforth go and remain, TO THE USE of the said D., his heirs and assigns. PROVIDED, that as regards the reversion or remainder expectant on the life estate of the said C. in the said premises and the title to and further assurance of the said premises after his death, the covenant on his part in these presents implied by statute shall not extend to the acts, deeds, or defaults of any person or persons other than or beside himself and his own heirs and persons claiming or to claim through or in trust for him, them, or some of them (*c*) [*acknowledgment and undertaking by C. as to*

Witnesseth.

Receipt.

Revocation of old uses and appointment to purchaser.

Proviso restricting liability of tenant for life under his implied covenants.

of the tenant for life is necessary to the exercise of the powers, although such consent may not be required by the settlement.

(*a*) See the Conv. Act, 1881 (App. IV., *infra*), s. 7. The direction, and not the consent only, of the tenant for life is required in order that covenants for title on his part may be implied.

(*b*) The words of the power are, as far as possible, to be used; if no words are prescribed (as where the power to revoke and appoint is implied only from the power to sell), the word "appoint" alone is the proper word.

(*c*) As to the obligation of a tenant for life to covenant for title in a conveyance under a power of sale exerciseable with his consent, see *Earl Poulett* v. *Hood*, L. R. 5 Eq. 115, and *Re Sawyer and*

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the recited indenture, ut supra, p. 147. *Statement for purposes of stamp duty, if appropriate, supra*, p. 135]. IN WITNESS, &c. (*a*).

THE SCHEDULE above referred to.

XVII.

PRECEDENT XVII.

BY TENANT FOR LIFE.

CONVEYANCE *by a* TENANT FOR LIFE *under the* SETTLED LAND ACT, 1882, *of* LAND *and a* RIGHT OF WAY (*b*).

Parties.

THIS INDENTURE, made the —— day of ——, 19—, BETWEEN A., of, &c. [*tenant for life and vendor*],

Baring's Contract, W. N. 1884, p. 192; 53 L. J. Ch. 1104; and the remarks in Dart, V. & P., 7th ed., p. 571; and also Davidson's Prec., vol. ii. 4th ed. pt. i. pp. 261, 262.

(*a*) As to land situate in a district in which registration is compulsory, see the observations, *supra*, pp. 83 *et seq.*

(*b*) Under the Settled Land Act, 1882, App. VII., *infra* (to which the reader is referred), as amended by the Settled Land Act, 1884, App. VIII., *infra*, the Settled Land Act, 1887, App. IX., *infra*, the Settled Land Act, 1889, App. X., *infra*, and the Settled Land Act, 1890, App. XI., *infra*, every tenant for life (sect. 2, sub-sects. 5 and 6) of settled land (sect. 2, sub-sects. 1, 2, 3, and 10 (i.), see also the Act of 1890, sect. 4), not being an infant (sect. 60), married woman (sect. 61), or lunatic (sect. 62), and notwithstanding any assignment of, or incumbrance upon, his life interest (sect. 2, sub-sect. 7, and sect. 50, sub-sect. 1; see also sub-sect. 2, and sects. 51 and 52), but subject to the rights of assignees and incumbrancers (sect. 50, sub-sects. 3 and 4; and sect. 4 of the Act of 1890), has (amongst other powers) power (sect. 3 (i.), see also sect. 17) to sell, or to join (sect. 19) with co-owners in selling (as the case may require), the settled land or any part thereof, or any easement, right, or privilege of any kind over or in relation to the same, subject to certain regulations respecting sales (sect. 4), and with a restriction as to the principal mansion-house and its demesne lands (sect. 10 of the Act of 1890), and has also power to complete the sale by conveyance (sect. 20, and see sect. 55 and sect. 6 of the Act of 1890). The purchase-

of the first part, B., of, &c., and C., of, &c. [*trustees of the settlement*], of the second part, and D., of, &c. [*pur-*

money (sect. 2, sub-sect. 9) must be paid (sect. 22) either to the trustees of the settlement (defined by sect. 2, sub-sect. 8, and see sect. 38, and sect. 16 of the Act of 1890, and sect. 47 of the Trustee Act, 1893 (App. XVI., *infra*), or into Court (see sect. 46), at the option of the tenant for life, but in the former case not to fewer than two persons (sect. 39), unless the settlement authorises the receipt of capital trust money of the settlement by one trustee. Not less than one month's notice in writing of the intended sale must be given (sect. 45, sub-sect. 1, see also the Act of 1884, sect. 5) to each of the trustees of the settlement, of whom for this purpose there must be two, unless a contrary intention is expressed in the settlement (sub-sect. 2), and to the solicitor (if any) of the trustees; but *bonâ fide* purchasers are not bound to see to the giving of this notice (sub-sect. 3), and are generally protected (sect. 54). Ancillary powers of entering into contracts for sale to be binding on the land (sect. 31), of transferring any incumbrance on the land sold to any other part of the settled land with the consent of the incumbrancer (sects. 5 and 20, see also sect. 24, sub-sects. 4 and 5), and of dedicating parts of the settled land for the general benefit of the residents upon it (sect. 16), are also given to the tenant for life, who, in exercising the powers of the Act, is to be deemed a trustee for all parties entitled under the settlement (sect. 53, see also sect. 12 of the Act of 1890), the trustees of the settlement being specially and generally protected in relation to his acts and otherwise (sects. 40—43), but being at liberty (sect 44) to refer differences to the Court. And the powers of a tenant for life under the Act are made exerciseable by various other limited owners (sect. 58), and on behalf of an infant seised of, or entitled in possession to land, or being a tenant for life, or a person having the powers of a tenant for life under the Act, by the trustees of the settlement (sects. 59, 60); and as regards married women, either by the woman alone or by herself and her husband, according as she is or is not entitled for her separate use (sect. 61); and as regards lunatics so found by inquisition by their committees (sect. 62). Corresponding provisions are made (sect. 63) for the case of a settlement by way of trust for sale, but (by the Act of 1884, sect. 7) the powers conferred in respect of such a settlement are not to be exercised without the leave of the Court.

The Act also gives to tenants for life and other limited owners powers of enfranchisement (sect. 3 (ii)), exchange (iii.) (see also

PRECEDENT XVII.

BY TENANT FOR LIFE.

Recital that vendor is tenant for life under a settlement,

and certain parties are trustees of the settlement;

chaser], of the third part. WHEREAS, under and by virtue of an indenture of settlement, dated the —— day of —— and expressed to be made between [*parties*] (*a*), the said A. is beneficially entitled to the possession of (*b*) the hereditaments hereinafter conveyed, and also of the land hereinafter described, over which a right of way is conveyed, as tenant for his life with remainders over, AND the said B. and C. are the trustees under the said settlement, with power of sale of the same hereditaments and land (*c*). AND WHEREAS the said A. in exercise of the

sect. 5 of the Act of 1890), and partition (iv.), with an ancillary power of raising by mortgage money required for equality of exchange or partition (sect. 18), which also refers to money required for purchasing enfranchisements, or for discharging incumbrances (sect. 11 of the Act of 1890), and powers of leasing and ancillary powers (Part IV., and see also the Act of 1889 and the Act of 1890), exerciseable under similar conditions *mutatis mutandis* to the power of sale; and also power (sect. 37), with the sanction of the Court, to sell chattels settled as heirlooms, and power (sect. 35) to cut and sell timber under certain restrictions, though impeachable for waste.

As to the investment and application of monies arising from sales and other capital trust money of the settlement, see Parts VI. and VII. and sects. 32 to 34, 36 and 47; also the Act of 1887 and the Act of 1890.

(*a*) This recital is adapted to the case of a sale by the first tenant for life under a settlement comprising the lands in question, and will, in other cases, require modification according to the circumstances; *e.g.*, if the vendor is the second tenant for life, then in possession, add here, "and in consequence of the death on the —— day of —— of —— [*the first tenant for life*]."

(*b*) If it be the fact, insert here, "among other hereditaments."

(*c*) *Or* (as the case may require) "with power of consent to or approval of the exercise of a power of sale of the same hereditaments and land" (see definition in S. L. Act, 1882, s. 2, sub-s. 8, and see S. L. Act, 1890, s. 16), *or* "are by the said settlement declared to be trustees thereof for purposes of the Settled Land Act, 1882," *or* "have by an order

Recital of order appointing trustees of settlement.

power in this behalf given to a tenant for life by the Settled Land Act, 1882, has agreed to sell to the said D., for the sum of £——, the fee simple in possession of the said hereditaments hereinafter conveyed together with the right of way hereinafter expressed (*a*). Now THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and for effectuating the said sale, and in consideration of £——, this day paid by the said D., by the direction of the said A., to the said B. and C. as such trustees as aforesaid (the receipt whereof the said B. and C. hereby acknowledge (*b*)), he the said A., in exercise

PRECEDENT XVII.

BY TENANT FOR LIFE.

—of agreement for sale.

Witnesseth.

Consideration.

Receipt.

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of the Chancery Division of the High Court of Justice, dated the —— day of ——, and made by the Hon. Mr. Justice ——, In the matter ——, been appointed by the Court to be trustees under the said settlement for purposes of the Settled Land Act, 1882." But where there is an order of the Court, it is more usual, and perhaps better, to recite the order formally and fully.

(*a*) If the property includes the principal mansion (as to which see sect. 10 of the S. L. Act, 1890), add here, "AND WHEREAS the said hereditaments hereinafter conveyed include the principal mansion-house on the said settled premises and the pleasure-grounds, park, and lands usually occupied therewith (which exceed twenty-five acres in extent), and the aforesaid sale of the same mansion-house, park, and lands is made with the consent of the said B. and C. as such trustees as aforesaid," or if it be the case, "with the approval of the Court as appears by the said order of the —— day of——." If such an order were recited this recital would not be necessary.

Recital as to sale of mansion-house.

(*b*) If the trustees are not parties, say, "the receipt whereof is acknowledged by a memorandum indorsed hereon," *or* "by a separate memorandum under their hands." But there seems to be no reason why they should not, as a rule, be made parties. And where the purchase-money is wholly or partly applied in or towards discharging an incumbrance having priority to the

PRECEDENT XVII.

BY TENANT FOR LIFE.

of the power in this behalf by the said Act given to a tenant for life, and as BENEFICIAL OWNER, doth hereby grant and convey unto the said D., his heirs and assigns, ALL THAT messuage, farm, and lands, called —— Farm, situate in the parish of ——, in the county of ——, the particulars whereof are specified in the schedule hereto, and which (for the better identification thereof but not so as either to restrict or to enlarge the descriptions hereinbefore and in the said schedule contained) are delineated on the plan annexed to these presents, and thereon edged round with a —— line, TOGETHER WITH the right for the said D., his heirs and assigns, and all persons authorised by him and them, with or without horses and vehicles of every or any kind at all times to pass and repass, and drive cattle, sheep, or other animals from and to the said messuage, farm, and lands, and every or any part thereof, to and from the high road between X. and Y., over the land delineated on the said plan, lying between the said messuage, farm, and lands, and the said high road along the strip indicated by dotted lines on the said plan, and which strip is intended as a road for such purpose, but without obligation on any person to form or repair such strip into or as a road, TO HOLD the premises UNTO and TO THE USE OF THE said D., his heirs and assigns: [*Proviso restricting liability of tenant for life under his implied covenants, and acknowledgment and undertaking as to deeds as expressed and indicated, supra*, pp. 159, 147; *statement for purposes of stamp duty, if appropriate, supra*, p. 135]. IN WITNESS, &c. (*a*).

Operative words.

Parcels;

—with right of way.

Habendum.

THE SCHEDULE above referred to.

settlement, they should clearly be made parties to express their concurrence and admit the application: *Re Norton and Las Casas' Contract*, [1909] 2 Ch. 59. If the money be paid into Court, say "paid by the said D. by the direction of the said A. into Court to the credit of——," and omit the receipt clause.

(*a*) Compare the next Precedent. And as to registered land see the observations, *supra*, pp. 88 *et seq.*

XVIII.

Conveyance *by a* Tenant *for* Life without Recitals, Reservation *of* Minerals (*a*).

Precedent XVIII.

By tenant for life, without recitals.

THIS INDENTURE, made the —— day of ——, 19—, BETWEEN A. B., of, &c. [*tenant for life and vendor*], of the first part, C. D., of, &c., and E. F., of, &c. [*trustees of the settlement*], of the second part, and G. H., of, &c. [*purchaser*], of the third part [supplemental to the indentures specified in the schedule hereto (*b*)], WITNESSETH that in consideration of £—— to the said C. D., and E. F., by the direction of the said A. B., this day paid by the said G. H., for the purchase of the fee simple of the hereditaments hereinafter granted (the receipt whereof the said C. D. and E. F. hereby acknowledge), he the said A. B., in exercise of the power in this behalf by the Settled Land Act, 1882, given to him as tenant for life in possession under the settlement mentioned in the first part of the schedule hereto of the said hereditaments, and AS BENEFICIAL OWNER, doth hereby grant and convey unto the said G. H., his heirs and assigns [*parcels, supra*, pp. 138, 164]. EXCEPT out of the grant and conveyance

Parties.

Witnesseth.

Consideration.

Receipt.

Operative words.

Reservation of mines (*c*).

(*a*) Compare Precedent XVII.

(*b*) Probably no real advantage is gained by making the deed supplemental.

(*c*) The following form (adapted to the case of a vendor seised in fee) provides for underground workings only:—

"EXCEPT out of this grant and conveyance and reserved unto the said A. B., his heirs and assigns, all mines and minerals under the said lands, and the right to work, get, and carry away the same, but only by underground operations, and so that the surface of the land and any building now erected, or which may hereafter be erected thereon be not entered upon, broken, injured, disturbed, or endan-

Exception of mines, with powers of working by underground operations only.

PRECEDENT XVIII.

BY TENANT FOR LIFE, WITHOUT RECITALS.

With powers of working.

hereinbefore contained and reserved unto the said A. B. and the persons who in succession to him are or for the time being shall become under the limitations of the said indenture of settlement entitled to the mines and minerals next hereinafter mentioned his and their heirs and assigns according to their respective estates and interests under the said indenture of settlement, all mines and minerals within and under the said lands and hereditaments hereinbefore granted, and full power at all times, to enter upon and occupy the surface of the same lands and hereditaments, or any part thereof, and to search for, sink to, work, win, get to bank, lay up, store, convert, burn, dress, and carry away the said minerals, and any mines, minerals, and substances in, under, or upon any other lands without leaving any vertical or lateral support for the surface of the said lands and hereditaments hereinbefore granted, or any building now standing, or which may hereafter be erected thereon, and for the purposes aforesaid, or any of them, to sink pits, erect buildings, furnaces, ovens, machinery, and apparatus, and to make, and use rail and other ways and roads, pit hills and spoil banks, and to dig, and get brick-earth and sand, and to make bricks to be used in building on the said lands and hereditaments, or in the mines under the same, or in mines connected therewith, but not for sale off the land, and to make watercourses, ponds, and reservoirs, and collect water, and to do upon, over, and under the surface of the

To sink pits, erect buildings, and make and use railroads, and make bricks.

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gered, and that compensation be made by the said A. B., his heirs or assigns, for all damage or injury that may actually be done to the surface of the said lands, or to any building now, or hereafter, to be erected thereon."

It is conceived that under this clause mere subsidence of the surface will not give rise to any claim on the part of the surface owner (*Butterley Co., Ltd.* v. *New Hucknall Colliery Co.*, [1909] 1 Ch. 37).

said lands and hereditaments, all things which may be found necessary, expedient, or convenient for the purposes aforesaid, or any of them, making and paying from time to time compensation to the said G. H., his heirs and assigns, and his or their lessees and tenants, for damage done in exercising the powers hereinbefore reserved [the amount of any such compensation to be referred in case of difference to two arbitrators, one to be appointed by each party pursuant and so as with regard to the mode and consequences of the reference, and in all other respects to conform to the provisions in that behalf contained in the Arbitration Act, 1889, or any then subsisting statutory modification thereof (*a*)], TO HOLD the premises UNTO and TO THE USE of the said G. H., his heirs and assigns: [*Proviso restricting liability of tenant for life under his implied covenants, supra*, p. 159]. AND the said A. B. doth hereby acknowledge the right of the said G. H. to production of the indentures specified in the schedule hereto, and to delivery of copies thereof, and undertake for the safe custody thereof. [*Statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c.

Making compensation.

Habendum.

Acknowledgment and undertaking as to deeds specified in schedule.

THE SCHEDULE above referred to (*b*).

PART I.

AN INDENTURE dated the —— day of ——, 18—, and expressed to be made BETWEEN P. B. of the first

(*a*) It is conceived that this stipulation is within the powers of a tenant for life, but it is not necessary. The deed must be executed by the grantee.

(*b*) The settlement mentioned in the first part of this schedule is assumed to be a family settlement by A. B. and his father P. B., the death of the latter and of R. S., one of the trustees appointed by the settlement, being also assumed to be recited in the indenture mentioned in the second part. L. M. and N. O. are presumably trustees of a term for raising portions.

PRECEDENT XVIII.
BY TENANT FOR LIFE, WITHOUT RECITALS.

part, the above-named A. B., of the second part, L. M. and N. O., of the third part, and P. Q. and R. S., of the fourth part, and being a settlement of divers manors and other hereditaments in the county of —— including the hereditaments comprised in the above-written indenture.

PART II.

AN INDENTURE dated the —— day of ——, 18—, and expressed to be made between the said A. B., of the first part, the said P. Q., of the second part, and the above-named C. D. and E. F., of the third part, and being an appointment of the said C. D. and E. F. to be trustees for the purposes of the Settled Land Act, 1882, in the place of the said P. Q. and R. S.

XIX.

PRECEDENT XIX.
UNDER TRUST FOR SALE IN A WILL TO USES OF SETTLEMENT.

CONVEYANCE *of* FREEHOLDS *under a* TRUST FOR SALE *in a* WILL TO *the* USES *of a* SETTLEMENT (*a*). VARIATIONS *for a like conveyance* UPON THE TRUSTS *of a* PERSONALTY SETTLEMENT.

Parties.

THIS INDENTURE, made the —— day of ——, 19—, BETWEEN A. B., of, &c., and C. D., of, &c. [*trustees for sale under the will*], of the first part; E. F., of,

(*a*) In this Precedent it is assumed that the purchase-money has arisen from a sale under the power in the settlement, but the Precedent might easily be adapted to the case of a purchase with money derived from a sale by the tenant for life, under the Settled Land Act, 1882 (App. VII.), and the necessary alterations for that case

PRECEDENT XIX.

UNDER TRUST FOR SALE IN A WILL TO USES OF SETTLEMENT.

&c., widow [*person consenting to the sale* (*a*)], of the second part; G. H., of, &c. [*tenant for life under the settlement*], of the third part; and I. K., of, &c., and L. M., of, &c. [*trustees of the power of sale in the settlement*], of the fourth part. WHEREAS R. F., late of ——, Esq., deceased, duly executed his will dated the —— day of ——, 188—, and thereby (among other things) devised all the hereditaments, of or to which he should at his death be seised, possessed, or entitled, or over which he should then have a power of testamentary disposition, unto the said A. B. and N. O., their heirs, executors, administrators, and assigns according to the tenure thereof, upon trust that the said A. B. and N. O., or the survivor of them, or the executors or administrators of such survivor their or his assigns, should with the consent in writing of his the testator's wife, the said E. F., during her life and after her death at the discretion of the said trustees or trustee for the time being, sell the same and should apply the monies to arise by such sale, for the purposes and in the manner therein expressed; And the said testator thereby appointed the said A. B. and N. O. executors of his said will (*b*). AND WHEREAS the said R. F. duly executed a codicil, dated, &c., to his said will, and thereby

Recital of will;

—codicil substituting a trustee for one deceased;

are indicated in the notes. It may also be adapted, by alterations similarly indicated, to the case of a purchase by the trustees of a personalty settlement. In the case of land situate in a district in which registration is compulsory, see the observations, *supra*, pp. 88 *et seq.*

(*a*) The trust is more commonly exerciseable without any consent, but in such a case it would only be necessary to omit the consenting party and all references to her.

(*b*) If the will should contain a general devise and bequest of real and personal estate combined, it would be proper to recite it in that form. See p. 178, *infra*. If the testator died after 1897, and the trustees are not the executors, a recital of the conveyance by or assent of the executors should be introduced. See p. 175, note (*c*), Precedent XXI., and note (*b*), p. 177, *infra*.

PRECEDENT XIX.

UNDER TRUST FOR SALE IN A WILL TO USES OF SETTLEMENT.

appointed the said C. D. to be a trustee and executor of his said will instead of the said N. O., who had died, and jointly with the said A. B., and devised to the said A. B. and C. D., their heirs, executors, administrators, and assigns, all the hereditaments which he had by his said will devised to the said A. B. and N. O., their heirs, executors, administrators and assigns, upon the trusts and with the powers by and in his said will declared and contained concerning the same. AND WHEREAS the said R. F. died on the —— day of ——, 1883, and his said will and codicil [together with another codicil immaterial to the purposes of these presents] were proved by the said A. B. and C. D. in the —— Registry of Probate on the —— day of ——, 1883. AND WHEREAS the said R. F. was at his death (*a*) seised of (among other hereditaments) the hereditaments hereinafter granted for an estate in fee simple in possession, free from incumbrances [except such as have been paid off and discharged as hereinafter recited. AND WHEREAS the said A. B. and C. D. paid off and discharged out of monies in their hands as executors and trustees of the said will, and applicable to the purpose, all the incumbrances [*or*, the only incumbrance] existing at the testator's death on the hereditaments devised by the said will [*or*, on the said hereditaments hereinafter granted], and procured the same hereditaments to be duly conveyed to themselves in fee simple in possession, discharged from the said incumbrances [*or* incumbrance]]. AND WHEREAS the said A. B. and C. D., with the consent of the said E. F., and in execution of the aforesaid trust for sale, have agreed to sell to the said I. K. and L. M. the fee simple in possession of the said hereditaments hereinafter granted free from incumbrances at the price of £——. AND WHEREAS the said I. K. and L. M. are the present trustees of an indenture of settlement dated,

—the death of testator;

—probate of his will;

—his seisin of hereditaments to be sold;

—payment off by trustee of mortgages existing at testator's death;

—agreement for sale to trustees of settlement;

—title of trustees of the settlement;

(*a*) See note (*a*), on p. 178, *infra*.

PRECEDENT XIX.

UNDER TRUST FOR SALE IN A WILL TO USES OF SETTLEMENT.

&c., and expressed to be made between [*parties*], and they agreed to purchase the said hereditaments with the consent of the said G. H., as the tenant for life in possession under the limitations of the said indenture of settlement out of monies under their control which have arisen from a sale under the power of sale therein contained of parts of the hereditaments therein comprised, and which under the trusts of the same indenture of settlement are applicable with such consent to the purchase of hereditaments to be conveyed to the uses and in manner hereinafter appearing (*a*). AND WHEREAS the

(*a*) If the purchase-money arose from a sale by the tenant for life, the following recital should be substituted:—

Agreement for purchase by tenant for life.

"AND WHEREAS the said [*tenant for life*] agreed to purchase the said hereditaments as the tenant for life, under an indenture of settlement dated, &c., and expressed to be made between [*parties*] of the —— estate in the county of ——, and with the intention that the said purchase-money should be paid by the said [*trustees of the settlement*] as the present trustees for purposes of the Settled Land Acts, 1882 to 1890, of the said settlement out of monies in their hands constituting capital monies arising under the said Acts in respect of the said settlement."

If the purchase were made by the trustees of a personalty settlement, the agreement by the trustees would be "to purchase the said hereditaments with the consent of the said G. H., out of monies in their hands as such trustees, and applicable with such consent to the purchase of hereditaments to be conveyed upon the trusts and in manner hereinafter appearing."

But according to common practice, the trusts of the hereditaments to be purchased as declared by the settlement would be set out at full length. It is wrong and very dangerous not to notice the trusts.

PRECEDENT XIX.

UNDER TRUST FOR SALE IN A WILL TO USES OF SETTLEMENT.

—as to deeds.

deeds and writings specified in the second schedule hereto, relate to the title as well of the hereditaments hereinafter granted as of the said other hereditaments, and are in the possession of the said A. B. and C. D. (*a*). Now THIS INDENTURE WITNESSETH, that for effectuating the said sale, and in consideration of £—— this day paid to the said A. B. and C. D. by the said I. K. and L. M. out of such monies as aforesaid, and with the consent (*b*) (hereby testified) of the said G. H. (the receipt of which sum of £—— the said A. B. and C. D. hereby acknowledge), they the said A. B. and C. D. AS TRUSTEES, do and each of them doth hereby grant unto the said I. K. and L. M. and their heirs [*parcels, supra*, pp. 134, 138, *and* 164], To HOLD the premises unto the said I. K. and L. M. and their heirs, to such of the uses, upon such of the trusts, and with and subject to such of the powers and provisions by and in the said indenture of settlement of the —— day of ——, limited, declared, and contained, of and concerning the freehold hereditaments therein comprised as are now subsisting or capable of taking effect, but not so as to increase or multiply charges or powers of charging (*c*). AND the said A. B. and C. D. do hereby acknowledge the right of the said G. H. and of the said

Witnesseth.

Considera-tion.

Receipt.

Operative words.

Parcels.

Habendum.

To uses of the settlement.

Acknowledg-ment as to deeds.

(*a*) See p. 139, *supra*, note (*a*).

(*b*) *Or*, "by the direction," as the case may require.

(*c*) The limitations of uses should, of course, accord with the directions of the settlement. If the purchase were made with money arising from a sale under the Settled Land Act, it would be well to follow closely the directions of sect. 24, sub-sect. 2.

Upon trusts of personalty settlement.

If the purchase were made by the trustees of a personalty settlement, the conveyance would be, "unto and to the use of the said I. K. and L. M., their heirs and assigns, upon the trusts and with and subject to the powers and provisions upon, with, and subject to which the same ought to be held under the said indenture of settlement, having been purchased with money thereby settled."

I. K. and L. M. to production of the said deeds and writings specified in the said second schedule hereto, and to delivery of copies thereof (*a*). [*Statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c.

THE FIRST SCHEDULE above referred to.

THE SECOND SCHEDULE above referred to.

(*a*) See p. 139, *supra*, note (*a*). It is considered that trustees are not bound to give any undertaking for safe custody.

As the Law of Property Amendment Act, 1859 (22 & 23 Vict. c. 35), is not now included in the Appendices, it is thought that the sections relating to sales by trustees and others, where there is a charge of debts, may conveniently be given here, but see p. 175, note (*c*). The sections are as follows:— 22 & 23 Vict. c. 35.

"**14.** Where by any will which shall come into operation after the passing of this Act the testator shall have charged his real estate or any specific portion thereof with the payment of his debts, or with the payment of any legacy or other specific sum of money, and shall have devised the estate so charged to any trustee or trustees for the whole of his estate or interest therein, and shall not have made any express provision for the raising of such debt, legacy, or sum of money out of such estate, it shall be lawful for the said devisee or devisees in trust, notwithstanding any trusts actually declared by the testator, to raise such debts, legacy, or money as aforesaid by a sale and absolute disposition by public auction or private contract of the said hereditaments or any part thereof, or by a mortgage of the same, or partly in one mode and partly in the other, and any deed or deeds of mortgage so executed may reserve such rate of interest and fix such period or periods of repayment as the person or persons executing the same shall think proper. Devisee in trust may raise money by sale, notwithstanding want of express power in the will.

"**15.** The powers conferred by the last section shall extend to all and every person or persons in whom the estate devised shall for the time being be vested by survivorship, descent, or devise, or to any person or persons who may be appointed under any power in the will, or by the Court of Chancery, to succeed to the trusteeship vested in such devisee or devisees in trust as aforesaid. Powers given by last section extended to survivors, devisees, &c.

"**16.** If any testator who shall have created such a charge as is described in the fourteenth section shall not have devised the Executors to have power

XX.

Precedent XX.

BY PERSONAL REPRESENTATIVES UNDER LAND TRANSFER ACT, 1897.

Conveyance *of* Freeholds *by the* Personal Representatives *of a* Deceased Person.

Parties.

Recitals;

THIS INDENTURE, made, &c., BETWEEN A., of, &c., and B., of, &c. [*personal representatives*], of the one part, and C., of, &c. [*purchaser*], of the other part. WHEREAS D., late of ——, Esq., deceased, duly executed his will, dated the —— day of ——, 18—, and thereby appointed

of raising money, &c., where there is no sufficient devise.

hereditaments charged as aforesaid in such terms as that his whole estate and interest therein shall become vested in any trustee or trustees, the executor or executors for the time being named in such will (if any) shall have the same or the like power of raising the said monies as is hereinbefore vested in the devisee or devisees in trust of the said hereditaments, and such power shall from time to time devolve to and become vested in the person or persons (if any) in whom the executorship shall for the time being be vested (*a*); but any sale or mortgage under this Act shall operate only on the estate and interest, whether legal or equitable, of the testator, and shall not render it unnecessary to get in any outstanding subsisting legal estate.

Purchasers, &c., not bound to inquire as to powers.

"**17.** Purchasers or mortgagees shall not be bound to inquire whether the powers conferred by sections fourteen, fifteen, and sixteen of this Act, or either of them, shall have been duly and correctly exercised by the person or persons acting in virtue thereof.

Sections 14, 15, and 16, not to affect certain sales, &c., nor to extend to devisees in fee or in tail.

"**18.** The provisions contained in sections fourteen, fifteen, and sixteen shall not in any way prejudice or affect any sale or mortgage already made or hereafter to be made, under or in pursuance of any will coming into operation before the passing of this Act, but the validity of any such sale or mortgage shall be ascertained and determined in all respects as if this Act had not passed; and the said several sections shall not extend to a devise to any person or persons in fee or in tail, or for the testator's whole estate and interest charged with debts or legacies, nor shall they affect the power of any such devisee or devisees to sell or mortgage as he or they may by law now do."

(*a*) This does not include a person to whom administration with the will annexed has been granted, *Re Clay and Tetley*, 16 Ch. D. 3.

PRECEDENT XX.

BY PERSONAL REPRESENTATIVES UNDER LAND TRANSFER ACT, 1897.

the said A. and B. to be executors thereof. AND WHEREAS the said D. died on the —— day of ——, 190—, and his said will was proved by the said A. and B. in the —— Registry of Probate, on the —— day of ——, 190— [*or recite D.'s death intestate, and grant of letters of administration to A. and B.*, p. , *infra*]. AND WHEREAS the said D. was at his death seised of [among other hereditaments] the hereditaments hereinafter granted for an estate in fee simple in possession free from incumbrances. AND WHEREAS the said A. and B. [in exercise of the power for this purpose conferred on them by the Land Transfer Act, 1897 (*a*)] have agreed with the said C. for the sale to him of the said hereditaments hereinafter granted in fee simple in possession free from incumbrances for the sum of £——. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of £—— to the said A. and B. this day paid by the said C. (the receipt whereof the said A. and B. do hereby acknowledge), they, the said A. and B., as personal representatives of the said D. [in exercise of the aforesaid power conferred on them by the Land Transfer Act, 1897, and of every or any other power enabling them, and by virtue also of their estate and interest], do hereby grant unto the said C., his heirs and assigns [*parcels*, pp. 134, 138, 164, *supra*], TO HOLD the premises UNTO and TO THE USE of the said C., his heirs and assigns for ever. [AND the said A. and B. do hereby acknowledge the right of the said C. to production of the deeds and writings specified in the schedule hereto, and to delivery of copies thereof (*b*).] [*Statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c. (*c*).

—of will;
—of death and probate;
—of seisin;
—of agreement for sale.

Witnesseth.

Consideration.

Receipt.

Conveyance.

Parcels.

Habendum.

Acknowledgment as to deeds.

THE SCHEDULE above referred to.

(*a*) These words are hardly necessary.

(*b*) See p. 139, note (*a*); p. 173, note (*a*).

(*c*) By virtue of the Land Transfer Act, 1897, Part I. (App. XVIII. *infra*), the executors or administrators of a person dying after 1897, have the same powers of dealing with his real estate as

XXI.

PRECEDENT XXI.

BY PERSONAL REPRESENTATIVES TO DEVISEE OR HEIR UNDER LAND TRANSFER ACT, 1897.

CONVEYANCE *of* FREEHOLDS *by the* PERSONAL REPRESENTATIVES *of a* DECEASED PERSON *to his* DEVISEE *or* HEIR.

THIS INDENTURE, made, &c., BETWEEN A., of, &c., and B., of, &c. [*personal representatives*], of the one part, and C., of, &c. [*devisee or heir*], of the other part. WHEREAS D., late of ——, Esq., deceased, duly executed his will, dated the —— day of ——, 189—, and thereby (among other things) appointed the said A. and B. executors thereof, and devised all his real estate to the said C. AND WHEREAS the said D. died on the —— day of ——, 190—, and his said will was proved by the said A. and B. in the —— Registry of Probate, on the —— day of ——, 190— [*or, recite D.'s death intestate, leaving C., his heir-at-law, and grant of letters of administration to A. and B.*, Prec. LXXIV., *infra*]. AND WHEREAS the said D. was at his death seised of the hereditaments hereinafter granted for an estate in fee simple in possession free from incumbrances. AND WHEREAS the said A. and B. have paid all the funeral and testamentary expenses of the said

Parties.

Recitals;

—of will containing devise;

—death and probate;

—of seisin;

with his personal estate, and it is conceived that a purchaser or mortgagee is not concerned or entitled to inquire whether debts remain unpaid, but must assume, in the absence of evidence to the contrary, that the money is being raised for purposes of administration where the sale or mortgage is made within twenty years from the death (see *Re Tanqueray-Willaume and Landau*, 20 Ch. D. 465). The Act, however, expressly provides (see sect. 2 (2)) that it shall not be lawful for some, or one only, of several joint personal representatives to sell real estate, and accordingly where a will has not been proved by all the executors it will be necessary for the non-proving executor, or executors, either to join or to renounce probate. See *Re Pawley and London & Provincial Bank*, [1900] 1 Ch. 58. It should be remembered that probate by one executor enures for the benefit of all.

PRECEDENT XXI.

BY PERSONAL REPRESENTATIVES TO DEVISEE OR HEIR UNDER LAND TRANSFER ACT, 1897.

testator, and all his debts of which they have had notice (*a*). AND WHEREAS the said C. has requested the said A. and B. to convey to him the said hereditaments hereinafter granted. NOW THIS INDENTURE WITNESSETH, that in compliance with the said request, the said A. and B., as personal representatives of the said D., do hereby grant and confirm unto the said C., his heirs and assigns [*parcels*, pp. 134, 138, 164], TO HOLD the premises UNTO and TO THE USE of the said C., his heirs and assigns. [*Acknowledgment as to title deeds if required, supra*, p. 175; *statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c. (*b*).

—of request to convey.

Witnesseth.

THE SCHEDULE above referred to.

(*a*) It may be convenient to introduce a recital to this effect, if the fact be so, but it can hardly be necessary.

(*b*) It is considered that it will usually be advisable for the devisee to have the land conveyed to him; but it would seem that the personal representatives have an option under sect. 3 of the Land Transfer Act, 1897 (App. XVIII., *infra*), either to assent or to convey: see *Re Pix*, [1901] W. N. 165; in the case of an heir, however, a conveyance will apparently be necessary (see sect. 3 (1)). Where an assent is taken it should be in writing, and in some such form as the following:—

"WE, A., of, &c., and B., of, &c., the executors of the will, dated the —— day of ——, 18—, and proved in the —— Registry of Probate, on the —— day of ——, 19—, of D., late of ——, Esq., deceased, do hereby assent to the devise by the said will expressed to be made to C., of, &c., of ALL THOSE [*parcels*, pp. 138, 164, *taking the description, where possible, from the will*]."

See as to the description, *Re Pix*, *ubi supra*.

The conveyance or assent may be made subject to a charge for the payment of any monies which the personal representatives are liable to pay. See sect. 3 (1) of the Act; and as to the extent of such a charge, *Re Cary & Lott's Contract*, [1901] 2 Ch. 463, may be referred to. It should be observed, however, that it is the duty of an executor to give his assent to a specific legacy as soon as circumstances permit, and if he refuse without cause, he may be compelled

XXII.

PRECEDENT XXII.

UNDER AN ORDER OF THE COURT.

CONVEYANCE *of* FREEHOLDS *sold under an* ORDER *of the* COURT *in an* ADMINISTRATION ACTION.

THIS INDENTURE, made, &c., BETWEEN A., of, &c., and B., of, &c. [*trustees for sale*], of the one part, and C., of, &c. [*purchaser*], of the other part. WHEREAS D., late of ——, deceased, was at the date of his will hereinafter recited, and thenceforth until his death continued to be, seised of the hereditaments hereinafter granted for an estate in fee simple in possession free from incumbrances (*a*). AND WHEREAS the said D. duly executed his will dated, &c., and thereby, after giving specific and pecuniary legacies, devised and bequeathed all his real and personal estate not thereby otherwise disposed of unto the said A. and B., their heirs, executors and administrators respectively, upon trust to sell, call in, and convert into money the same, and out of the net proceeds to pay his funeral and testamentary expenses, debts, and legacies, and to invest the residue of the said net proceeds as therein mentioned and to stand possessed of such residue and the investments thereof and the income of the same upon trusts thereby declared for the benefit of his daughter E. and her husband (if any) and issue, and otherwise as therein expressed, and he appointed the said A. and B. executors of his said will. AND WHEREAS the said testator died on the —— day of ——, 19—, and his said will was on

Parties.

Recital of testator's seisin;

—of his will;

—of his death;

—and probate of his will;

to give it by a Court of equity. See Williams on Executors, 10th ed. Vol. II. p. 1103. An assent in writing not under seal does not require a stamp: *Kemp* v. *I. R. Commissioners*, [1905] 1 K. B. 581.

(*a*) If the testator was seised at the date of his will, it is usual and proper so to recite, although the will was made or revived on or after the 1st of January, 1838. If the will was made or revived on or after that day, and the testator was not seised at the date of his will, a recital of seisin should be introduced afterwards, as in Precedent XIX.

PRECEDENT XXII.

UNDER AN ORDER OF THE COURT.

the —— day of ——, 19—, proved by the said A. and B. in the —— Registry of Probate. AND WHEREAS by an order of the Chancery Division of the High Court of Justice dated the —— day of ——, 19—, and made by the Hon. Mr. Justice ——, in an action in which the said E. was plaintiff and the said A. and B. were defendants (being an action for the administration of the real and personal estate of the said testator, and the execution of the trusts of his said will), it was ordered that the testator's real estate (which real estate as appears by the master's certificate therein referred to comprised the said hereditaments hereinafter granted and also other hereditaments and was unincumbered should be sold under the direction of the Court (*a*), and that the purchase-money to arise from the sale thereof should be paid into Court to the credit of the action, *Re D. E.* v. *A.* 19—, D. No. —, "Proceeds of sale of real estate." AND WHEREAS pursuant to the said order the said testator's real estate was on the —— day of ——, 190—, put up for sale by auction in several lots, the said hereditaments hereinafter granted constituting lot —. AND WHEREAS at the said sale the said C. was the highest bidder for the said lot — at the sum of £1,000, and he thereupon paid to X., the person appointed by the said Judge to receive the same (*b*), the sum of £100 as a deposit pursuant to one of the conditions of the said sale, which last-mentioned sum, together with other deposits received at the said sale, has since been paid by the said X. (*c*) into Court in the said action to the account aforesaid. AND WHEREAS under a direction of the master, the said C. on the —— day of ——, 190—,

—of an order of Court for the sale;

—of the auction;

—of the sale to the purchaser and payment of deposit;

—of payment of balance of purchase-money.

(*a*) Or, if so ordered, "out of Court," and mention who is to have the conduct of the sale. See as to sales of that description, *Cumberland Union Banking Company* v. *Maryport Hematite Iron and Steel Company*, [1892] 1 Ch. 92.

(*b*) If the sale be out of Court, say "to X., the auctioneer."

(*c*) Or the person having conduct of the sale.

PRECEDENT XXII.

UNDER AN ORDER OF THE COURT.

paid the sum of £900, the balance of his said purchase-money [together with a sum of £50 the amount of a valuation of timber on the said hereditaments made in accordance with one of the conditions of the said sale] and the sum of £15 for interest thereon [respectively] at the rate of £—— per cent. per annum from the —— day of ——, 190—, to the —— day of ——, 190—, making together an aggregate sum of £915 [£965], into Court in the said action to the account aforesaid (*a*). NOW THIS INDENTURE WITNESSETH that for effectuating the said sale and in consideration of the said sums of £100 and £915 [£965], making together £1,015 [£1,065] paid by the said C. as hereinbefore recited and of the premises, the said A. and B. AS TRUSTEES do and each of them doth hereby grant unto the said C., his heirs and assigns [*parcels*, pp. 134, 138, &c.], TO HOLD the premises unto and TO THE USE of the said C., his heirs and assigns (*b*). IN WITNESS, &c.

Witnesseth.

Consideration.

Operative words.

Habendum.

THE SCHEDULE above referred to.

XXIII.

PRECEDENT XXIII.

TO SEPARATE USE OF A MARRIED WOMAN.

CONVEYANCE *of* FREEHOLDS *to a* MARRIED WOMAN *on a purchase out of her separate property* (*c*).

THIS INDENTURE, made, &c., BETWEEN A. B., of,

Parties.

(*a*) The practice now is not to obtain the order which was formerly usual, directing that the purchaser should be let into possession, and that all proper parties should join in conveying the property to him, except when an order is needed for some other purpose. If such an order be obtained, it should be recited here. See the Annual Practice, Order 51, as to sales by the Court generally.

(*b*) As to the covenants, see note, p. 142, *supra*. An acknowledgment for production of deeds should be added, if it be required, and be not taken by a separate instrument. As to the stamp duty, see the Finance (1909-10) Act, 1910, s. 73.

(*c*) Savings by a married woman out of an allowance made to her by her husband for housekeeping, or out of money settled upon

PRECEDENT XXIII.

TO SEPARATE USE OF A MARRIED WOMAN.

&c. [*vendor*], of the one part, and E. D., of, &c. (*a*) [*purchaser*], of the other part, WITNESSETH, that in consideration of £—— this day paid to the said A. B., by the said E. D. out of monies belonging to her for her separate use, for the purchase of the fee simple in possession of the hereditaments hereinafter granted ((*b*) the receipt whereof the said A. B. doth hereby acknowledge), HE the said A. B., AS BENEFICIAL OWNER, at the request of the said

Witnesseth.

Consideration.

Receipt.

her before marriage, have always been considered to belong to her for her separate use, and to be at her absolute disposal. By the "Married Women's Property Act, 1870" (33 & 34 Vict. c. 93) (sect. 1), earnings of a married woman acquired after the passing of the Act (9th August, 1870), in any employment in which she was engaged separately from her husband (see *Ashworth* v. *Outram*, 5 Ch. D. 923; *Lovell* v. *Newton*, 4 C. P. D. 7), and money or property so acquired through the exercise of any literary, artistic, or scientific skill, and all investments of such earnings, money, or property were to be deemed property settled to her separate use; and (sects. 7 and 8) as to any woman married after the passing of the Act, any personal property to which she should during marriage become entitled as next of kin of an intestate, and any sum not exceeding £200 to which she should during marriage become entitled under any deed or will, and the rents and profits of any freehold, copyhold or customaryhold property which should descend upon her as heiress of an intestate, were to belong to her for her separate use. The Act referred to and the Married Women's Property Act, 1870, Amendment Act, 1874, are repealed by the Married Women's Property Act, 1882 (App. XII., *infra*), except as regards acts done or rights acquired whilst either of the former Acts was in force; and under the repealing Act all property acquired after the commencement of that Act by a woman married previously, or belonging to or acquired by a woman afterwards married, belongs to such woman for her separate use. See as to trust property, the note *supra*, p. 58.

(*a*) If, which is convenient, thought not essential, the husband be made a party, "C. D., of, &c. [*husband*], and E. D., his wife."

(*b*) If the husband be a party, insert here "the payment whereof out of such monies as aforesaid the said C. D. doth hereby admit and."

PRECEDENT XXIII.

TO SEPARATE USE OF A MARRIED WOMAN.

E. D. (*a*), doth hereby grant unto the said E. D., her heirs and assigns [*parcels*, pp. 134, 138, &c.], TO HOLD the premises UNTO and TO THE USE of the said E. D., her heirs and assigns, as her separate property (*b*). [*Statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c.

Grant.
Parcels.
Habendum.
To wife for her separate use.

THE SCHEDULE above referred to.

XXIV.

PRECEDENT XXIV.

COVENANT TO SURRENDER COPYHOLDS.

COVENANT *to surrender* COPYHOLDS *to a* PURCHASER.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*vendor*], of the one part, and B., of, &c. [*purchaser*], of the other part, WITNESSETH, that in consideration of £—— to the said A. this day paid by the said B. for the purchase of the hereditaments hereinafter covenanted to be surrendered (the receipt whereof the said A. doth

Parties.
Witnesseth.
Consideration.
Receipt.

(*a*) If the husband be a party, insert here "and with the consent of the said C. D."

(*b*) In editions prior to the Married Women's Property Act, 1882, a trustee was interposed (see *Gilbert* v. *Lewis*, 32 L. J. Ch. 351; 1 De G. J. & S. 38, and *Allen* v. *Walker*, L. R. 5 Ex. 187), and in the later of them the property was limited to such uses as the wife should appoint, and subject thereto to the use of the trustee and his heirs during her life without impeachment of waste, upon trust for her and her assigns for her separate use, with remainder to the use of the survivor of herself and her husband in fee simple. It is clear that, regard being had to the Married Women's Property Act, 1882, a simple limitation to the wife in fee simple, and for her separate use, is now sufficient and proper. The express mention of the separate use, though probably unnecessary (see *Re Lumley*, [1896] 2 Ch. 690), is desirable. That such a limitation will not defeat the husband's curtesy if the wife dies without disposing of the property, see *Cooper* v. *Macdonald*, 7 Ch. D. 288; *Eager* v. *Furnivall*, 17 Ch. D. 115.

PRECEDENT XXIV.

COVENANT TO SURRENDER COPYHOLDS.

Covenant.

hereby acknowledge), HE the said A., AS BENEFICIAL OWNER, doth hereby covenant with the said B. (*a*) that he the said A. or his heirs, and all other necessary parties (if any), will forthwith (*b*) effectually surrender into the hands of the lord of the manor of ——, in the county of ——, according to the custom thereof, ALL THOSE the —— and hereditaments situate in the parish of ——, in the county of ——, delineated on the plan in the margin of these presents, and specified in the schedule hereto, all which —— and hereditaments are in the court rolls of the said manor described as follows:—(that is to say) [*description from the rolls* (*c*)], TO THE USE of the said B., his heirs and assigns, according to the custom of the said manor, and by and under the accustomed rents, fines, suits and services (*d*). [*Statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c.

THE SCHEDULE above referred to.

(*a*) See Conv. Act, 1881 (App. IV., *infra*), ss. 58 and 59.

(*b*) The surrender is in practice made out of Court immediately after the deed of covenant is executed.

(*c*) It is hardly necessary to observe that the description on the rolls is frequently incorrect; and that, therefore, in the deed of covenant, it is often requisite to give both the true and the manorial description.

(*d*) In some earlier editions a declaration of trust by the vendor in favour of the purchaser was inserted here, as it had been decided that in case the covenant to surrender should not be performed by the vendor in his lifetime, this declaration would enable the purchaser to obtain a vesting order, or an order to convey under the Trustee Act, 1850. *Re Collingwood's Trusts*, 6 W. R. 536. But since the decision in *Re Cuming*, L. R. 5 Ch. 72, that after the payment of the purchase-money and the execution by the vendor of a covenant to surrender, though without any such declaration of trust, such an order can be obtained by the purchaser, this clause has been omitted as unnecessary.

There seems no reason to doubt that covenants for title can be implied in a covenant to surrender copyholds in the same manner as on a conveyance of freeholds. See sect. 2 (v.) and sect. 7, sub-sect. 5 of Conv. Act, 1881 (App. IV., *infra*).

XXV.

PRECEDENT XXV.

OF AN ABSOLUTE REVERSION IN FREEHOLDS.

CONVEYANCE *of an absolute* REVERSION *in* FREEHOLDS (*a*).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. [*vendor*], of the one part, and C. D., of, &c. [*purchaser*], of the other part. WHEREAS by virtue of the will of ——, dated the —— day of —— (*b*), and duly executed as by law was then required for the devise of freehold estates, and of a disentailing assurance, dated, &c., and expressed to be made between, &c. [*parties*], and duly perfected by enrolment on the —— day of ——, the said A. B. is entitled in fee simple, in remainder immediately expectant on the estate for life of the said E. B. [*father of vendor and party to the disentailing deed*] therein, to the hereditaments hereinafter granted, free from incumbrances. NOW THIS INDENTURE WITNESSETH, that in consideration of £- - - to the said A. B. this day paid by the said C. D. for the purchase of the fee simple of the said hereditaments, subject to the said life estate of the said E. B. therein, but free from incumbrances (the receipt whereof the said A. B. doth hereby acknowledge), HE the said A. B., AS BENEFICIAL OWNER, doth hereby grant unto the said C. D. and his heirs [*parcels*, pp. 134, 138, 164, &c.], TO HOLD the premises UNTO and TO THE USE of the said C. D., his heirs and assigns, subject to the estate for life of the said E. B. therein (*c*). [*Statement for*

Parties.

Recital of instruments creating the reversionary interest.

Witnesseth.

Consideration.

Receipt.

Habendum to purchaser in fee, subject to the life estate.

(*a*) In the case of land situate in a district to which compulsory registration applies, see the observations *supra*, pp. 104—106.

(*b*) This will is supposed to have been made before 1838. A purchaser of property of this description must of course bear in mind the provisions of the Settled Land Act, 1882 (App. VII., *infra*).

(*c*) The succession duty (if any) payable on the death of a tenant for life, is, on a sale of the remainder without any stipulation in respect of such duty, payable by the purchaser (see *Cooper* v. *Trewby*,

purposes of stamp duty, if appropriate, supra, p. 135. | IN WITNESS, &c.

THE SCHEDULE above referred to.

28 Bea. 194; *Re Langham*, W. N. 1890, 213; 60 L. J. Ch. 110; *Re Kidd and Gibbon's Contract*, [1893] 1 Ch. 695; *Re Weston and Thomas's Contract*, [1907] 1 Ch. 244; and also *Re Repington*, [1904] 1 Ch. 811, as to legacy duty on an assignment of a reversionary interest); but upon a sale by tenant for life and remainderman of the fee simple in possession, it has been considered and generally admitted, that they ought to discharge the duty. In the last-mentioned case it would seem that no estate duty will be payable on the death of the tenant for life (*Att.-Gen.* v. *Beech*, [1898] 2 Q. B. 147; [1899] A. C. 53; *Earl Cowley* v. *I. R. Commrs.*, [1899] A. C. 198), but there may be some doubt upon the point, if the disposition can be fairly regarded as being for the benefit of the remainderman exclusively (Finance Act, 1900, s. 11, sub-s. (1)). The following is a form of a covenant to pay duties :—

Covenant to pay duties.

"AND THE SAID M. doth hereby covenant with the said N. that he the said M., his heirs, executors, or administrators, will pay when and so soon as the same shall become payable, or otherwise discharge and satisfy all the estate and succession duties and other duties (if any) which shall upon the death of the said I. K. be leviable or payable in respect of the said premises hereinbefore granted, or of the succession thereby conferred on the said M. or his heirs, of and in the same premises; and will at all times keep the said N., his heirs, appointees, executors, administrators, and assigns indemnified against the payment of the said duties and against all actions, proceedings, costs, damages, claims and demands which may be incurred or sustained by reason of the non-payment thereof, or of any part thereof, or otherwise in relation thereto."

XXVI.

PRECEDENT XXVI.

OF A LIFE ESTATE IN FREEHOLDS.

CONVEYANCE *of a* LIFE ESTATE *in* FREEHOLDS (*a*).

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*vendor*], of the one part, and B., of, &c. [*purchaser*], of the other part. WHEREAS by an indenture, dated, &c., and expressed to be made between [*parties*] (being a settlement made in consideration of the marriage shortly afterwards solemnized between the said A. and ——), the hereditaments hereinafter granted stand limited to the use of the said A. and his assigns, during his life, without impeachment of waste, with remainders over. AND WHEREAS the said A. has agreed with the said B. for the sale to him of the said hereditaments for the life of the said A. at the price of £——. NOW THIS INDENTURE WITNESSETH, that in consideration of £—— to the said A. this day paid by the said B. (the receipt whereof the said A. doth hereby acknowledge), HE the said A., as BENEFICIAL OWNER, doth hereby grant unto the said B., his executors, administrators, and assigns [*parcels*, pp. 134, 138, 164, &c.], TO HOLD the premises UNTO and TO THE USE of the said B., his executors, administrators, and assigns, during the life of the said A. [*Statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c. (*b*).

Parties.

Recital of settlement creating the estate for life.

Contract for sale.

Witnesseth.

Consideration.

Receipt.

Grant.

Habendum.

To use of purchaser, his executors, administrators, and assigns.

THE SCHEDULE above referred to.

(*a*) See as to the effect of such a conveyance on the statutory powers of the life tenant, sect. 50 of the Settled Land Act, 1882 (App. VII., *infra*), and see S. L. Act, 1890 (App. XI., *infra*), s. 4.

(*b*) Where the land is situate in a district in which registration is compulsory, see the observations *supra*, p. 106, as to the means by which the purchaser may protect himself.

XXVII.

Conveyance *of a* Contingent Estate (*a*) *in* Copyholds.

Precedent XXVII. of a contingent estate in copyholds.

THIS INDENTURE, made, &c., between A., of, &c. [*vendor*], of the one part, and B., of, &c. [*purchaser*], of the other part. Whereas [*recite the instrument by which the estate was created, and the subsequent events formally, or proceed in this manner, with variations according to circumstances:*] under the will dated the —— day of ——, and proved in the —— Registry on the —— day of ——, of ——, deceased, and of several subsequent events, the said A. as one of the —— children of ——, his mother, is now presumptively entitled in remainder immediately expectant on the death of the said ——, and in the event of his surviving her, to the inheritance, according to the custom of the manor of ——, in the county of ——, of one —— share of the copyhold hereditaments hereinafter mentioned, and will, in the event aforesaid, on the death of any one, or more, or all of his brothers and sisters in the lifetime of the said ——, become entitled to the inheritance, according to the custom of the said manor, of a further share or shares, or of the entirety of the same hereditaments. And whereas the said A. has agreed with the said B. for the sale to him, at the price of £——, of the reversionary and contingent interest to which he the said A. is, or will be in the event or events aforesaid, entitled in the said share or shares or entirety of the said hereditaments, free from incumbrances, except the accustomed rents, fines, suits and services. Now this indenture witnesseth, that, in pursuance of the said agreement, and in consideration of the sum of £—— to the said A. this day paid by the said B. (the receipt whereof the said A. doth hereby acknowledge), he the

Parties.

Recital of state of title;

—of contract for sale.

Witnesseth.

Consideration.

Receipt.

(*a*) See *supra*, p. 13.

PRECEDENT XXVII.

OF A CONTINGENT ESTATE IN COPYHOLDS.

said A., AS BENEFICIAL OWNER, doth hereby grant and dispose of (*a*) unto the said B., his heirs and assigns, ALL THAT the —— share, and all and every other, the shares, share, or entirety, to which the said A. is, or will be in the event of his surviving the said ——, entitled, of [*parcels*, pp. 134, 138, &c.], TO HOLD the premises UNTO and TO THE USE of the said B., his heirs and assigns, subject to the estate for life therein of the said ——, and to the contingency of the estate and interest of the said A. in the said hereditaments being defeated by his death in the lifetime of the said ——, and according to the custom of the said manor, and by and under the accustomed rents, fines, suits, and services. [*Statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c.

Operative words.
Parcels.
Habendum.

THE SCHEDULE above referred to.

XXVIII.

PRECEDENT XXVIII.

OF NEXT PRESENTATION TO A RECTORY.

GRANT *by an* ABSOLUTE OWNER *of the* NEXT PRESENTATION *to a* RECTORY (*b*).

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*vendor*], of the one part, and B., of, &c. [*purchaser*], of the other part, WITNESSETH, that in consideration of £ —— to the said A. this day paid by the said B. for the purchase of the presentation hereinafter mentioned (the receipt whereof the said A. doth hereby acknowledge), HE the said A. AS BENEFICIAL OWNER, doth hereby grant unto the said B., his executors, administrators, and assigns, ALL

Parties.
Witnesseth.
Consideration.
Receipt.
Grant.

(*a*) See the words of sect. 6 of the statute, 8 & 9 Vict. c. 106 (App. I., *infra*.)

(*b*) As to the law of sales of advowsons and next presentations, see Davidson's Prec. vol. ii. 4th ed. pt. i. pp. 30—41, 356; and the Benefices Act, 1898 (61 & 62 Vict. c. 48).

THAT the turn or right of presentation to the rectory and parish church of ——, in the county of ——, and diocese of ——, which shall first happen after the execution of these presents, TO HOLD the same UNTO the said B., his executors, administrators, and assigns. [*Statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c.

PRECEDENT XXVIII.
——
OF NEXT PRESENTATION TO A RECTORY.
Parcels.
Habendum.

XXIX.

CONVEYANCE *of a* MANUFACTORY *to* TENANTS IN COMMON *in fee*. ASSIGNMENT *of* MACHINERY.

PRECEDENT XXIX.
——
TO TENANTS IN COMMON.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*vendor*], of the one part, and B., of, &c., and C., of, &c. [*purchasers*], of the other part, WITNESSETH, that in consideration of £—— this day to the said A. paid by the said B. and C. (the receipt whereof the said A. doth hereby acknowledge), HE the said A., AS BENEFICIAL OWNER, doth hereby grant unto the said B. and C., their heirs and assigns, ALL THAT mill and factory situate in —— street, in the borough of ——, commonly called —— mill, with the boilers, furnaces, engines, gearing, drums, and shafts thereunto belonging, and all other the fixtures in or about the same mill; and also all those several warehouses, cottages, and pieces of land situate in —— and —— streets, in —— aforesaid, which together with the said mill are delineated on the plan in the margin of these presents, and specified in the first schedule hereto (*a*), TO HOLD the premises hereinbefore granted UNTO and TO THE USE of the said B. and C., their

Parties.
Witnesseth.
Consideration.
Receipt.
Grant.
Parcels.
Habendum.

(*a*) The property conveyed is supposed to consist of the mill itself and neighbouring buildings, and land used for the purposes of the mill.

PRECEDENT XXIX.

TO TENANTS IN COMMON.

heirs and assigns, as tenants in common in equal shares. AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, HE the said A., AS BENEFICIAL OWNER, doth hereby assign unto the said B. and C., their executors, administrators, and assigns, ALL THOSE the machines, tools, utensils, implements, and effects specified in the second schedule hereto, and all other (if any) the machinery, tools, utensils, implements, and things now in, about, or belonging to the said mill. TO HOLD the premises hereinbefore assigned UNTO the said B. and C., their executors, administrators, and assigns, as tenants in common in equal shares (*a*). [*Statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c.

Witnesseth, secondly. Assignment. Parcels.

Habendum as tenants in common in fee.

THE FIRST SCHEDULE above referred to.

THE SECOND SCHEDULE above referred to.

XXX.

PRECEDENT XXX.

OF A BASE FEE IN FREEHOLDS.

CONVEYANCE *of a* BASE FEE *in* FREEHOLDS *by a* TENANT *in* TAIL *in* REMAINDER.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. [*vendor*], of the one part, and C. D., of, &c. [*purchaser*], of the other part. WHEREAS [*Recitals showing that the hereditaments expressed to be hereby granted stand limited to the use of E. B. for life, with remainder*

Parties. Recital of settlement creating the entail.

(*a*) The deed appears to be a bill of sale of the trade machinery and loose chattels, and as such to require registration under the Bills of Sale Act, 1878, unless followed by immediate possession, as usually it would be. It should be observed that the trade machinery and loose chattels would pass by delivery, and the second witnessing part might therefore be omitted, if the purchaser should be content to rely on the title acquired by such delivery.

to A. B. in tail]. AND WHEREAS the said A. B. has agreed to sell to the said C. D. the reversion or remainder immediately expectant on the estate for life of the said E. B. therein, of and in the said hereditaments for such estate as the said A. B. can now, or may hereafter become able to, dispose of, at the price of £——. NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and in consideration of £—— to the said A. B. this day paid by the said C. D. (the receipt whereof the said A. B. doth hereby acknowledge), HE the said A. B., AS BENEFICIAL OWNER, doth hereby grant and dispose of unto the said C. D., his heirs and assigns [*parcels*, pp. 134, 138, 164, &c.], TO HOLD the premises UNTO and TO THE USE of the said C. D., his heirs and assigns, SUBJECT to the estate for life of the said E. B. therein, BUT DISCHARGED from the estate tail of the said A. B. therein. AND it is hereby agreed and declared that the covenant on the part of the said A. B., implied in these presents, for further assurance of the said premises, shall extend to the making and doing after the death of the said E. B., if the said A. B. shall survive him, and during the remainder of the life of the said A. B., of every assurance or thing, which may be necessary or proper, for enlarging the base fee hereby created into, and vesting the said premises in the said A. B., his heirs and assigns, for an absolute estate in fee simple. AND the said A. B. doth hereby appoint the said C. D., his heirs and assigns, the attorney and attorneys of him the said A. B., in his name and on his behalf to execute and do every or any such assurance or thing as aforesaid. [*Statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c. (*a*).

PRECEDENT XXX.

OF A BASE FEE IN FREEHOLDS.

Agreement for sale.

Witnesseth.

Consideration.

Receipt.

Grant.

Habendum to purchaser in fee;

subject to estate for life;

but freed from estate tail.

Extension of implied covenant for further assurance to enlargement of base fee.

Appointment of purchaser as attorney to execute such assurances.

THE SCHEDULE above referred to.

(*a*) This deed must be enrolled in the Central Office within six calendar months after its execution by the vendor, under the provisions of the Act 3 & 4 Will. IV. c. 74. As the protector of

XXXI.

PRECEDENT XXXI.

ENFRANCHISEMENT UNDER POWER.

ENFRANCHISEMENT *of* COPYHOLDS *under a* POWER *in a* SETTLEMENT.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. [*trustees of the power*], of the first part, E. F., of, &c. [*tenant for life*], of the second part, and G. H., of, &c. [*copyholder*], of the third part. WHEREAS, by virtue of an indenture of settlement dated the —— day of ——, and expressed to be made between [*parties*], and of several indentures indorsed thereon (*a*), and in the events which have happened and particularly in consequence of the death of the said J. F. [*second tenant for life*], on the —— day of ——, 187—, leaving the said E. F. his only child, and the death of the said L. F. [*first tenant for life*] on the —— day of ——, 188—, the manor of ——, in the county of ——, now stands limited [with other manors and hereditaments] to uses under which the said E. F. is tenant for life thereof in possession, and the said A. B. and C. D., as the present general trustees of the said indenture of settlement, have power, with the consent in writing of the said E. F., to enfranchise in manner hereinafter appearing any tenement holden of the said manor. AND WHEREAS (*b*) on the

Parties.

Recital of title to the manor;

—and of power;

the settlement is not a party to the conveyance, a base fee only passes, determinable on the death of the tenant in tail without leaving issue inheritable under the entail surviving him. See the above Act, sect. 34. As to the extension of the covenant for further assurance, *Bankes* v. *Small*, 34 Ch. D. 415, on appeal, 36 Ch. D. 716, may be referred to, and also *Re Gaskell and Walker's Contract*, [1906] 2 Ch. 1.

(*a*) *i.e.*, a deed varying the uses of the settlement, and several appointments of new trustees.

(*b*) Or, if it be the fact, "at a Court held for the said manor," and in that case omit "out of Court."

PRECEDENT XXXI.

ENFRANCHISEMENT UNDER POWER.

day of —— the said G. H. was out of Court admitted tenant of the hereditaments hereinafter appointed by the description of, &c. [*description from court rolls* (*a*)], to hold the same unto the said G. H., his heirs and assigns, at the will of the lord according to the custom of the said manor. AND WHEREAS the said A. B. and C. D. in exercise of the said power, and with the consent (hereby testified) of the said E. F., have agreed with the said G. H. for the enfranchisement in manner hereinafter appearing of the said hereditaments for the sum of £——. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement and in consideration of £—— this day paid by the said G. H. to the said A. B. and C. D. (the receipt whereof they hereby acknowledge), they the said A. B. and C. D. AS TRUSTEES with the consent and by the direction (hereby testified) of the said E. F. directing AS BENEFICIAL OWNER, do hereby revoke all the uses, trusts, powers, and provisions by virtue of the said indenture of settlement and indentures indorsed thereon or any of them subsisting in and concerning the freehold and inheritance of the hereditaments hereinafter appointed, AND DO HEREBY appoint that ALL THAT messuage or tenement with the offices, outbuildings, gardens, and orchard thereto belonging known as —— House, situate in the parish of ——, in the county of —, and particularly described on the plan annexed to these presents and thereon coloured ——, TOGETHER WITH the mines and minerals (*b*) within and under the same, and all such common and commonable rights as the said G. H. was entitled to in respect of or as appendant or appurtenant to the same premises immediately before the present enfranchisement (*c*), SHALL HENCEFORTH go and remain TO THE USE of the said G. H., his heirs and assigns, as

—of admittance of copyholder;

—of agreement for enfranchisement.

Witnesseth.

Consideration.

Receipt.

Revocation of old uses.

And appointment of parcels;

—with mines and commonable rights.

(*a*) It is convenient to give this.

(*b*) Forms of reservation of mines and minerals will be found *supra*, pp. 165, 166.

(*c*) This is usual.

PRECEDENT XXXI.

ENFRANCHISEMENT UNDER POWER.

freehold, enfranchised and for ever discharged from all incidents of copyhold tenure. [*Proviso restricting liability of tenant for life under his implied covenant, supra*, p. 159.] AND THE said E. F. doth hereby acknowledge the right of the said G. H. to production and delivery of copies of the said indenture of settlement and indentures indorsed thereon, and of the court rolls of the said manor so far as they relate to the hereditaments hereinbefore appointed (*a*), and undertake for the safe custody thereof. [*Statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c.

To purchaser in fee.

Acknowledgment and undertaking as to deeds.

XXXII.

PRECEDENT XXXII.

OF LEASEHOLDS.

ASSIGNMENT *of* LEASEHOLDS *on a* SALE. VARIATIONS *for* REGISTERED LAND.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*vendor*], of the one part, and B., of, &c. [*purchaser*], of the other part. WHEREAS, by an indenture of lease, dated the —— day of ——, and expressed to be made between [*parties*], all those, &c. [*parcels from the lease*], with the appurtenances, were demised to the said C., his executors, administrators, and assigns, for the term of —— years from the —— day of ——, at the yearly rent of £——, and subject to covenants by the lessee and conditions therein contained (*b*). AND WHEREAS the said premises

Parties.

Recital of lease;

—of its

(*a*) See *Re Agg Gardner*, 25 Ch. D. 600.

(*b*) In assigning leaseholds, it is usual and preferable to recite the lease and to set out the parcels in the recital; and in stating the parcels, the exceptions (if any) should either be set out or mentioned, so as to show what was actually demised. If it is desired to avoid reciting the lease, the Precedent may be made available by omitting all the recitals, and the reference to the agreement, adding after the statement of the consideration,

are now vested in the said A. for the residue of the said term of —— years (*a*). AND WHEREAS the said A. has agreed with the said B. for the sale to him, at the price of £——, of the premises aforesaid, for the residue of the

having become vested in vendor;

—of the contract for sale.

"for the purchase of the hereditaments expressed to be hereby assigned," and substituting for the parcels:—

Parcels in assignment of leasehold without reciting the lease.

"All that messuage No. —, L—— Street, in the parish of M. in the county of N., the site of which was by an indenture of lease dated the —— day of —— and expressed to be made between [*parties*] demised to the said [*lessee*], for the term of —— years at the yearly rent of £——, and subject to covenants by the lessee and conditions therein contained, and which is now vested in the said A. for the residue of the same term,"

or as the case may be. It is sometimes considered that if the character of the property has changed, this is the better mode of assignment. But there is no difficulty in adapting the common form to such circumstances by adding after the parcels in the operative part a reference to the description by which the property has come to be better known.

(*a*) It is usual particularly to refer to the last assignment, viz. that to the vendor; but as nothing is gained by this reference, it has been omitted. The following recital may be substituted if A. is the registered proprietor with an absolute title (see p. 91, *supra*), or added if he be the registered proprietor with a possessory title:—

Recital of registration of leaseholds.

"AND WHEREAS the said A. is registered as proprietor with an absolute [possessory *or* good leasehold] title of the premises comprised in the said indenture of lease, the title thereof in the register being No. —, in the parish of ——, in the district of ——, and the county of ——."

If notice only of the lease has been entered (see p. 104, *supra*), introduce before the last recital:—

Recital of notice of lease.

"AND WHEREAS a notice of the said lease was, on the —— day of ——, entered against the land registered under the title No. ——, in the parish of ——, in the district of ——, and county of ——."

PRECEDENT XXXII.

OF LEASEHOLDS.

Witnesseth.

Consideration.

Receipt.

Assignment.

Parcels.

Habendum.

said term, free from incumbrances. NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of £——, to the said A. this day paid by the said B. (the receipt whereof the said A. doth hereby acknowledge), he the said A. AS BENEFICIAL OWNER, doth hereby assign unto the said B., his executors, administrators, and assigns, ALL the said —— hereditaments and premises by the said indenture of the —— day of —— [*lease*] expressed to be demised (*a*), TO HOLD the premises unto the said B., his executors, administrators, and assigns for the residue of the said term of —— years, at the rent and subject to the covenants by the lessee, and conditions in the said lease reserved and contained, and henceforth to be paid, performed and observed (*b*). AND THE SAID B. doth hereby covenant with the said A., that he the said B., his executors, administrators, or assigns, will henceforth pay the rent by the said lease reserved, and perform (*c*) and observe all the covenants by the lessee and conditions therein contained, and keep the said A., his heirs, executors, and

Covenant by purchaser to pay rent and observe covenants,

and indemnify vendor in respect thereof.

(*a*) If houses or other buildings have been erected since the date of the lease, so as to vary the description of the property, they should be mentioned thus:

"together with all those —— messuages and buildings which have been built on the said land since the date of the said lease,"

or in some similar way. If the houses are numerous, they may be placed in a schedule, and referred to accordingly: this is particularly convenient when it is desired to show the tenancy and rental.

(*b*) As to the covenants for title implied in a conveyance of leaseholds, see the Conv. Act, 1881, sect. 7 (1) (A.) (B.), (App. IV., *infra*). If the land is registered, add extension of the covenant for further assurance and appointment of attorney, p. 150, *supra*.

(*c*) This word has not necessarily an active meaning (*Barrow* v. *Isaacs & Son*, [1891] 1 Q. B. 417 at 424; *Harman* v. *Ainslie*, [1904] 1 K. B. 698; *Harris* v. *Boots, Cash Chemists* (*Southern*), *Ltd.*, [1904] 2 Ch. 376).

administrators, indemnified against all actions, expenses, claims, demands, and liability on account of the non-payment of the said rent, or the breach of the said covenants and conditions, or any of them (*a*). [*Statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c.

XXXIII.

ASSIGNMENT *of* LEASEHOLDS *by Executors* (*b*) *of the Lessee.* BY INDORSEMENT *on the Lease.*

THIS INDENTURE, made, &c., BETWEEN A., of, &c., and B., of, &c. [*vendors*], executors of the will, dated

Parties.

(*a*) Every vendor of a lease is entitled to require this covenant, except assignees of bankrupts (*Wilkins* v. *Fry*, 1 Mer. 244, 263; Dart, V. & P., 7th ed. p. 581), and assignors of underleases who or whose testators or intestates have not covenanted to perform the covenants in the original lease; nor can such a covenant be required as to an underlease if that was made at a peppercorn rent without covenant by the underlessee. See Davidson's Prec. Conv., 4th ed. vol. ii. pt. i. pp. 216—218. As to the object and construction of the covenant, see *Gooch* v. *Clutterbuck*, [1899] 2 Q. B. 148; *Re Poole and Clarke's Contract*, [1904] 2 Ch. 173; *Harris* v. *Boots, Cash Chemists (Southern), Ltd.*, [1904] 2 Ch. 376. The trustee of the property of a bankrupt under the Bankruptcy Act, 1869, or the Acts of 1883 and 1890, appears to stand in the same position in this respect as an assignee under the former Bankruptcy Acts; but such a trustee desiring to disclaim a lease, and obliged to assign it to an equitable mortgagee, would seem not to be within the above exception. See *Ex parte Burton*, 15 Ch. D. 289.

The covenant differs from that formerly in use, in not expressly binding the heirs, executors, and administrators of the covenantor (as to which, see sect. 59 of Conv. Act, 1881, App. IV., *infra*), and in not being made expressly with the executors and administrators of the covenantee (as to which, see sect. 58 of the same Act).

(*b*) Upon a sale of a leasehold by executors, the title may be accepted without inquiry whether all the debts have been paid, although more than twenty years have elapsed from the death.

PRECEDENT XXXIII.

OF LEASEHOLDS BY EXECUTORS.

the —— day of ——, and proved in the —— Registry of Probate on the —— day of ——, of the within-named X. [*lessee*], of the one part, and C., of, &c. [*purchaser*], of the other part, WITNESSETH, that in consideration of £—— this day paid by the said C. to the said A. and B. for the purchase of the hereditaments demised by the within-written indenture (the receipt whereof the said A. and B. hereby acknowledge), THEY, the said A. and B., AS PERSONAL REPRESENTATIVES of the said X. (*a*), do, and each of them doth, hereby assign unto the said C., his executors, administrators, and assigns, ALL the hereditaments comprised in and demised by the within-written indenture, TO HOLD the premises unto the said C., his executors, administrators, and assigns henceforth, for the residue of the term of —— years granted by the within-written indenture, at the rent thereby reserved, and subject to the covenants by the lessee and conditions therein contained, and henceforth to be performed and observed. AND the said C. doth hereby covenant with the said A. and B., that he the said C., his executors, administrators, and assigns, will henceforth pay the rent reserved by the said lease, and perform and observe all the covenants by the lessee and conditions therein contained, and will keep the said A. and B., their executors and administrators, and the estate of the said X. indemnified against all actions, expenses, claims, demands, and liability on account of the non-payment of the said rent, or the breach of the said covenants and conditions, or any of them. [*Statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c.

Witnesseth.
Consideration.
Receipt.
Assignment.
Parcels.
Habendum.

Covenant by purchaser to pay rent and perform the lessee's covenants.

See *Re Whistler*, 35 Ch. D. 561; *Re Venn and Furze's Contract*, [1894] 2 Ch. 101; but see *Re Verrell's Contract*, [1903] 1 Ch. 65, where the purchaser had actual notice that there were no unpaid debts.

(*a*) See the Conv. Act, 1881, s. 7 (1) (F.) (App. IV., *infra*).

XXXIV.

Assignment *of* Leaseholds *by* Trustees *in* Bankruptcy, the Bankrupt *being a party* (*a*).

Precedent XXXIV.

Of leaseholds in bankruptcy.

Parties.

THIS INDENTURE, made, &c., between A., of, &c., B., of, &c., and C., of, &c., the trustees of the property of D., of, &c., a bankrupt, of the first part, the said D., of the second part, and E., of, &c. [*purchaser*], of the third part [*recite the lease to D., supra*, p. 194]. And whereas the said D. was on the —— day of —— adjudged a bankrupt by the High Court of Justice, [*or* the County Court of ——, holden at ——,] and on the —— day of —— the said A., B., and C. were duly appointed trustees of the property of the said D., and such appointment was

Recital of bankruptcy.

(*a*) Under the Bankruptcy Acts, 1883 and 1890 (46 & 47 Vict. c. 52, s. 55; 53 & 54 Vict. c. 71, s. 13), the trustee of the property of a bankrupt may within a limited time disclaim any such property (as to which word see 21 Q. B. D. 484) consisting of land of any tenure burdened with onerous covenants, and the disclaimer will operate to determine, as from its date, the rights, interests, and liabilities of the bankrupt, and the personal liability of the trustee in the property disclaimed, but will not, except for that purpose, affect the rights or liabilities of any other person. The trustee is not entitled to disclaim a lease without the leave of the Court, except in the cases mentioned in Rule 69 of the Bankruptcy Rules, 1890 (which has been substituted for Rule 320 of the Bankruptcy Rules, 1886), and is bound on an application by any interested person (*e.g.*, the lessor, *Re Page*, 14 Q. B. D. 401; *Re Finley*, 21 Q. B. D. 475) to decide within a specified time whether he will disclaim or not; and the Court has power to make an order vesting the disclaimed property in any person entitled thereto, subject to the same liabilities and obligations as if the lease had been assigned to him at the date of the bankruptcy (*Re Carter and Ellis*, [1905] 1 K. B. 735). Any person injured by the operation of such a disclaimer is to be deemed a creditor of the bankrupt to the extent of the injury. As to the operation and effect of disclaimer generally, see Williams on Bankruptcy, 9th ed.

PRECEDENT XXXIV.

OF LEASEHOLDS IN BANKRUPTCY.

Of contract for sale.

Witnesseth.

Consideration.

Receipt.

Assignment.

Parcels.

Habendum.

certified by the Board of Trade. AND WHEREAS the said trustees have agreed to sell the premises comprised in the hereinbefore recited indenture of lease to the said E., for the residue of the said term of —— years at the price of £——, AND the said D. has agreed to join in these presents in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH, that for effectuating the said sale, and in consideration of £—— to the said trustees this day paid by the said E. (the receipt and payment whereof as aforesaid the said trustees and D. hereby respectively acknowledge), THEY the said A., B., and C., AS TRUSTEES, do and each of them doth hereby assign, and HE the said D. AS BENEFICIAL OWNER doth hereby assign and confirm unto the said E., his executors, administrators, and assigns, ALL THE hereditaments and premises by the hereinbefore recited indenture expressed to be demised, TO HOLD the said premises unto the said E., his executors, administrators, and assigns, for the residue of the said term of —— years at the rent reserved by and subject to the covenants by the lessee and conditions contained in the said indenture of lease, and henceforth to be performed and observed (*a*). [*Statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c.

(*a*) Trustees of the property of bankrupts, like assignees in bankruptcy under the former Bankruptcy Acts, appear not to be entitled to require any covenant on the part of a purchaser to perform the covenants of the lease, see *supra*, p. 197, (*a*). Under the Bankruptcy Act, 1883 (as under that of 1869), the bankrupt is released from liability upon the trustee either selling or otherwise accepting the lease or disclaiming it. See Dart, V. & P. 7th ed., pp. 580, 581. As to the position of the bankrupt under the former law, see the Bankruptcy Law Consolidation Act, 1849 (12 & 13 Vict. c. 106), s. 145, and *Colles* v. *Evanson*, 19 C. B. (N. S.) 372.

XXXV.

ASSIGNMENT *of* PART *of* LEASEHOLD PROPERTY *with* COVENANTS *and* CROSS POWERS *of* DISTRESS *for securing Payment of a* PROPORTIONATE PART *of the* RENT (*a*).

PRECEDENT XXXV. — PART OF LEASEHOLD.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*vendor*], of the one part, and B., of, &c. [*purchaser*], of the other part [*recite lease, supra*, p. 194 (*b*)]. AND WHEREAS [after divers mesne assignments and acts in the law ultimately] by virtue of an indenture dated, &c., and expressed to be made between [*parties*], the premises became vested in the said A., for the then residue of the said term of —— years (*c*). AND WHEREAS the said A.

Parties.

Recital of lease;

—and assignment to vendor;

—contract for sale;

(*a*) See p. 126, *supra*, note (*b*). As regards the powers of distress, it is doubtful whether these are not affected by the Bills of Sale Acts. See *Pulbrook* v. *Ashby & Co.*, 56 L. J. (N. S.) Q. B. D. 376; *Stevens* v. *Marston*, W. N. 1890, 193; 39 W. R. 129; *Re Roundwood Colliery Company*, [1897] 1 Ch. 373; and see also the observations of Lord Esher, M.R., in *Hughes* v. *Little*, 18 Q. B. D. 32 at p. 36, and the observations on attornment clauses, *infra*, p. 330, and on the Bills of Sale Acts, *infra*, p. 334. There may also be some doubt whether these powers and the ancillary powers of entry and holding possession may not be obnoxious to the perpetuity rules, unless confined within the usual legal limits. See *Re Daveron*, [1893] 3 Ch. 421; *Re Wood*, [1894] 3 Ch. 381; *Re Appleby*, [1903] 1 Ch. 565.

(*b*) Or it may often suffice to refer to the parcels in the lease simply as "the hereditaments hereafter assigned with other hereditaments." In that case the words "comprised in the hereinbefore recited indenture of lease," will be added after "premises" in the next recital, and the contract for sale will be of "the said hereditaments hereinafter assigned."

(*c*) See note (*a*) on p. 195, *supra*. The mesne and last assignments are here referred to for the purpose of explaining and simplifying the acknowledgment and undertaking as to deeds.

PRECEDENT XXXV.

PART OF LEASEHOLD.

—agreement to enter into special covenants.

has agreed with the said B. for the sale to him, at the price of £——, of those parts which are hereinafter described and assigned of the said premises for the residue of the said term, subject as hereinafter mentioned: AND WHEREAS, upon the treaty for the said sale, it was agreed that the said A. and B. respectively should enter into the covenants and grant the powers hereinafter by them respectively entered into and granted: NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreements, and in consideration of £——, to the said A. this day paid by the said B. (the receipt whereof the said A. doth hereby acknowledge), he the said A. AS BENEFICIAL OWNER doth hereby assign unto the said B., his executors, administrators, and assigns, ALL THAT messuage with the coach-house, stables, offices, out-buildings, garden, and appurtenances belonging thereto, situate and being No. 10, —— Road, in the parish of —— in the county of ——: TO HOLD the premises hereinbefore assigned, UNTO the said B., his executors, administrators, and assigns for the residue of the said term of —— years, subject to the payment of the yearly rent of £10, being one equal moiety of the said yearly rent of £20 reserved by the hereinbefore recited indenture of lease, and to the covenants by the lessee, and conditions contained in the same indenture, and henceforth to be performed and observed in respect of the premises hereinbefore assigned; AND THE SAID A. doth hereby for himself and his assigns (*a*), covenant with the said B. and his assigns that he, the said A., his executors, administrators, or assigns will henceforth pay the yearly rent of £10, being one equal moiety of the said yearly rent of £20 reserved by the said indenture of lease, and perform and observe all the covenants by the lessee and conditions contained in the same indenture and henceforth to be performed and observed in respect of such of the premises therein comprised as are not herein-

Witnesseth.

Consideration.

Receipt.

Assignment.

Parcels.

Habendum.

Covenants by vendor to pay rent apportioned, and observe covenants relating to property retained:

(*a*) Assigns should be mentioned.

PRECEDENT XXXV.

PART OF LEASEHOLD.

before assigned, AND WILL at all times keep the said B., his heirs, executors, administrators, and assigns, and the premises hereinbefore assigned, indemnified against all proceedings, costs, damages, claims, demands, and liability for non-payment of the said last-mentioned yearly rent of £10, or breach of the said covenants and conditions, or any of them, in respect of such of the premises comprised in the said indenture of lease as are not hereinbefore assigned: PROVIDED ALWAYS, and it is hereby agreed that if the said yearly rent of £10 hereinbefore covenanted by the said A. to be paid in respect of such of the premises comprised in the said indenture of lease as are not hereinbefore assigned, or any part thereof, shall be in arrear for — days after any of the days by the said indenture of lease appointed for payment of the said rent of £20, or the said B., his executors, administrators, or assigns shall be put to any costs or expenses in consequence of any breach of any of the covenants hereinbefore on the part of the said A. contained, it shall be lawful for the said B., his executors, administrators, or assigns, into or upon the same premises to enter and distrain, and the distress and distresses then and there found to dispose of in due course of law, as landlords may do in respect of distresses for rent reserved upon lease, and also to enter into and upon, and to hold the same premises and take the rents and profits thereof, until by the means aforesaid, or some of them or otherwise, the said yearly rent of £10 so in arrear, and all costs and expenses incurred by the non-payment thereof or by any breach of the said covenants hereinbefore on the part of the said A. contained, shall have been fully paid and satisfied. AND THE SAID B. doth hereby, for himself and his assigns, covenant with the said A. and his assigns, that he the said B., his executors, administrators, or assigns will henceforth pay the yearly rent of £10, being one equal moiety of the said

—and indemnify purchaser.

Grant of powers of distress and entry by vendor (*a*).

Covenants by purchaser to pay rent and perform covenants in relation to assigned property;

(*a*) See note (*a*) on p. 205, *infra*.

PRECEDENT XXXV.

PART OF LEASEHOLD.

yearly rent of £20 reserved by the said indenture of lease, and perform and observe all the covenants by the lessee and conditions contained in the same indenture, and henceforth to be performed and observed in respect of the premises hereinbefore assigned, AND WILL at all times keep the said A., his heirs, executors, administrators, and assigns, and such of the premises comprised in the said indenture of lease as are not hereinbefore assigned, indemnified against all proceedings, costs, damages, claims, demands, and liability for non-payment of the said last-mentioned yearly rent of £10, or breach of the said covenants and conditions, or any of them, in respect of the premises hereinbefore assigned: PROVIDED ALSO, and it is hereby agreed that if the said yearly rent of £10 hereinbefore covenanted by the said B. to be paid in respect of the premises hereinbefore assigned, or any part thereof, shall be in arrear for —— days after any of the days by the said indenture of lease appointed for payment of the said rent of £20, or the said A., his executors, administrators, or assigns shall be put to any costs or expenses in consequence of any breach of any of the covenants hereinbefore on the part of the said B. contained, it shall be lawful for the said A., his executors, administrators, or assigns, into or upon the same premises to enter and distrain, and the distress and distresses then and there found to dispose of in due course of law as landlords may do in respect of distresses for rent reserved upon lease, and also to enter into and upon and to hold the same premises until by the means aforesaid, or some of them or otherwise, the said yearly rent of £10 so in arrear, and all costs and expenses incurred by the non-payment thereof, or by any breach of the said covenants hereinbefore on the part of the said B. contained, shall have been fully paid and satisfied. [PROVIDED ALWAYS, and it is hereby declared that the respective powers hereinbefore contained, of distress and of entry and perception of the rents and profits of the said respective premises shall not be exercise-

—and indemnify vendor.

Grant of powers of distress and entry by purchaser.

Restriction of powers in point of time.

able after the expiration of twenty-one years from the death of the survivor of the children, and remoter issue now living of her late Majesty Queen Victoria.] AND the said A. doth hereby acknowledge the right of the said B. to production and delivery of copies of the said indenture of lease and assignments, and undertake for the safe custody thereof. [*Statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c. (*a*).

Production of deeds.

(*a*) It has been found impossible consistently with the scheme of this Precedent to combine the vendor's and purchaser's covenants, but the powers of distress and entry granted by the vendor might be omitted, and the following reciprocal grant substituted for those granted by the purchaser.

"And each of them, the said A. and B., doth hereby grant to the other of them, that if default shall be made in payment of the rent hereinbefore by either of them covenanted to be paid for —— days after any of the days by the said indenture of lease appointed for payment of the said rent of £20, or there shall be a breach of any of the covenants hereinbefore on the part of either of them contained, it shall be lawful for the other of them, his executors, administrators, or assigns, into and upon the premises in respect of which such default or breach shall have occurred to enter and distrain, and the distress and distresses then and there found to dispose of in due course, as landlords may do in respect of distresses for rent reserved upon lease, and also to enter into and upon and to hold the same premises and take the rents and profits thereof, until by the means aforesaid, or some of them or otherwise, the rent so unpaid, and all costs and expenses incurred by reason of such default or breach shall have been fully paid and satisfied."

Reciprocal grants of powers of distress and entry.

XXXVI.

Precedent XXXVI.

ASSIGNMENT OF LEASE TO ONE PURCHASER ON SALE IN LOTS.

Assignment *of* Lease *to* one Purchaser *of* Leasehold *sold in* Lots, *to the* Intent *that he may* grant Underleases *to the* other Purchasers (*a*).

Parties.

Recital of lease of a piece of building ground;

—of erection of houses thereon;

—that lease vested in vendor;

—of sale of the leaseholds in lots to the present purchaser and others;

—of agreement that B. should take assignment of lease and grant underleases to the other purchasers.

Witnesseth.

Consideration.

THIS INDENTURE, made, &c., between A., of, &c. [*vendor*], of the one part, and B., of, &c. [*purchaser*], of the other part. Whereas by an indenture, dated, &c., and made between [*parties*], All that parcel of land situate, &c. [*parcels from the lease*], was demised unto the said [*lessee*], his executors, administrators, and assigns, for the term of —— years from the —— day of ——, at the yearly rent of £100, and under and subject to covenants by the lessee, and conditions therein contained; [And whereas the said [*lessee*] erected on the said piece of land demised by the said indenture of lease, the *ten* messuages in —— Street, in the said parish of ——, particularised in the schedule hereto;] And whereas the said [leasehold land, messuages, and] premises became by assignment, and now are vested in the said A., for the residue of the said term of —— years; And whereas the said A. lately agreed to sell the said [messuages and] premises to the said B. and the other persons mentioned in that behalf in the said schedule, in the lots and at the prices mentioned in the said schedule, and subject to such apportionments as therein mentioned of the said yearly rent of £100; And whereas, on the treaty for the said sales, it was agreed that the said B. should take an assignment of all the said premises comprised in the said indenture of lease, and should execute to the other purchasers underleases of the parts thereof purchased by them respectively as hereinafter mentioned. Now this indenture witnesseth, that, in pursuance of the said agreements, and in consideration of £—— [*the purchase-*

(*a*) See the form of a condition adapted to this state of circumstances, *supra*, p. 127.

money payable by B.], this day paid by the said B. to the said A. (the receipt whereof the said A. doth hereby acknowledge), and in consideration of the premises, the said A. as BENEFICIAL OWNER doth hereby assign unto the said B., his executors, administrators, and assigns, ALL THAT the said piece or parcel of land by the hereinbefore recited indenture of lease demised, [and the said *ten* messuages or tenements situate and being numbers —— to —— inclusive, —— Street, in the said parish of ——, more particularly described in the schedule hereto]; And all other, if any, the hereditaments demised by or now held under the said indenture of lease, TO HOLD the premises unto the said B., his executors, administrators, and assigns, for the residue of the said term of —— years, at the rent reserved by and subject to the covenants by the lessee and conditions contained in the hereinbefore recited indenture of lease, and henceforth to be performed and observed; AS TO the premises comprised in lot one and described under that number in the said schedule hereto, for the sole use and benefit of the said B., his executors, administrators, and assigns, AND AS to the premises comprised in each of the other lots described in the said schedule hereto, Upon trust when thereunto required by the said A., his executors, administrators, or assigns, to execute a proper underlease thereof unto and at the cost of the purchaser thereof, or unto and at the cost of such other person as shall be nominated in that behalf by the said A., his executors, administrators, or assigns, for the residue of the said term of —— years except the last three days of such term, at the apportioned yearly rent mentioned in that behalf in the said schedule hereto, and subject to covenants by the underlessee with the said B., and conditions corresponding in all respects, except as to the amount of yearly rent thereby reserved, with the covenants by the lessee, and conditions contained in the hereinbefore recited indenture of lease, so far as such covenants and conditions respectively shall be applicable to the pre-

PRECEDENT XXXVI.

ASSIGNMENT OF LEASE TO ONE PURCHASER ON SALE IN LOTS.

Receipt.

Assignment.

Parcels.

General words.

Habendum

for residue of term.

As to the lot bought by B. for him.

As to the rest of the premises in lease, in trust to grant the underleases to other purchasers.

PRECEDENT XXXVI.

ASSIGNMENT OF LEASE TO ONE PURCHASER ON SALE IN LOTS.

mises comprised in such underlease; AND in the meantime until such underlease shall be executed as aforesaid, In trust for the said A., his executors, administrators, and assigns, subject to the agreements for the sale thereof hereinbefore mentioned, and subject in equity to the payment by the said A., his executors, administrators and assigns of the apportioned yearly rent, and to the performance or observance by him or them of the covenants to be reserved by and contained in such underlease. [*Covenant by B. with A. for payment of rent and performance of covenants of lease, supra*, p. 196; *statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c.

Meanwhile in trust for vendor, subject to his contracts for sale.

THE SCHEDULE above referred to.

No. of Lot.	Description of Property.	Apportioned Yearly Rent.	Name and Address of Purchaser.

XXXVII.

PRECEDENT XXXVII.

UNDERLEASE TO A PURCHASER OF PART OF A LEASEHOLD.

UNDERLEASE *to a* PURCHASER *of* PART *of a* LEASEHOLD *sold in* LOTS, *the* LEASE *having been assigned to* ANOTHER PURCHASER *at the same Sale* (*a*).

THIS INDENTURE, made, &c., BETWEEN B., of, &c. [*the purchaser, assignee of the lease*], of the first part; A., of, &c. [*vendor*], of the second part; and C., of, &c. [*purchaser of an underlease*], of the third part [*recital of lease as in Precedent XXXVI.*]; [AND WHEREAS the said

Parties.

Recital of original lease; —of erection of houses by lessee;

(*a*) See the last previous Precedent.

PRECEDENT XXXVII.

UNDERLEASE TO A PURCHASER OF PART OF A LEASEHOLD.

[*lessee*] erected on the said parcel of land demised by the said indenture of lease the messuage No. —— in —— Street, hereinafter demised, and *nine* other messuages in the same street, numbered respectively ——, and now standing on the said parcel of land; AND WHEREAS the said leasehold land, messuages, and premises became by assignment, and at the respective times of the sale and of the execution of the indenture respectively hereinafter recited were vested in the said A. for the then residue of the said term of —— years]; AND WHEREAS the said A. lately agreed to sell to the said C., at the price of £——, the [said] messuage and premises hereinafter demised, which form part of the premises comprised in the said indenture of lease, at the apportioned yearly rent of £——; AND WHEREAS upon the treaty for the said sale it was agreed that all the said premises comprised in the hereinbefore recited indenture of lease should be assigned to the said B. as the purchaser of part thereof, for the residue of the said term, and that he should grant to the said C. and purchasers of other parts thereof, underleases of the premises purchased by them respectively; AND WHEREAS in pursuance of the said agreement in that behalf, the said premises comprised in the said indenture of lease have been assigned to the said B. by an indenture dated, &c., and made between [*parties*], but as to the premises hereinafter demised upon trust to grant to the said C., such underlease thereof as hereinafter is expressed. NOW THIS INDENTURE WITNESSETH that, for effectuating the said sale by the said A. to the said C., and in pursuance of the said trust, and in consideration of the sum of £—— now paid by the said C. to the said A. (the receipt whereof the said A. doth hereby acknowledge), the said B., at the request of the said A., doth hereby demise unto the said C., his executors, administrators, and assigns, All that messuage, &c. [*Parcels*]; TO HOLD the premises hereinbefore demised, unto the said C., his executors, administrators, and assigns, for

—that lease vested in vendor;

—of agreement for sale at apportioned rent;

—of agreement that B. should take assignment of lease and grant underleases;

—of assignment accordingly.

Witnesseth.

Consideration.

Receipt.

Demise.

Parcels.

Habendum.

PRECEDENT XXXVII.

UNDERLEASE TO A PURCHASER OF PART OF A LEASEHOLD.

the residue of the said term of —— years created by the hereinbefore recited indenture of lease, except the last *three* days thereof, YIELDING therefor unto the said B., his executors, administrators, and assigns, during the said term hereby created, the yearly rent of £——, by equal *half-yearly* payments, on the —— day of ——, and —— day of —— (*a*), the first of such *half-yearly* payments to be made on the —— day of —— next (*b*). AND THE SAID C. doth hereby, for himself and his assigns, covenant with the said B., his executors, administrators, and assigns, that the said C., his executors, administrators, or assigns, will henceforth pay the said yearly rent of £——, at the times and in the manner hereinbefore appointed for payment thereof, and will perform and observe all the covenants by the lessee (except the covenant for payment of rent), and conditions contained in the hereinbefore recited indenture of lease, so far as the same respectively relate to the said premises hereinbefore demised, and keep the said B., his executors, administrators, and assigns, indemnified against all actions, costs, damages, claims, demands, and liability for breach of the said covenants (except as aforesaid), or any of them. [*Proviso for re-entry, infra*, p. 399, *substituting the names of the parties for* lessor *and* lessee]; And the said B. doth hereby [*Covenant for quiet enjoyment, infra*, p. 400, *substituting the names of the parties for* lessor *and* lessee]; And further, that the said B., his executors,

—for sub-term.

Reddendum.

Covenant by C. to pay the apportioned rent and perform the covenants.

Covenant for quiet enjoyment;

—and for payment of rent and performance of covenants of old lease (*c*).

(*a*) The apportioned rent should be reserved half-yearly or quarterly, as in the original lease, and should be made payable before the rent days in the original lease.

(*b*) The benefit of the covenants for title in the assignment will pass (it is considered) to the under-lessee by virtue of the Conv. Act, 1881, s. 7, sub-s. (6).

(*c*) As to this covenant (which is merely collateral and does not run with the land) and its effect upon the preceding covenant for quiet enjoyment, see *Dewar* v. *Goodman*, [1907] 1 K. B. 612; [1908] 1 K. B. 94.

administrators, or assigns will during the said term hereby created pay the said yearly rent of £—— by the hereinbefore recited indenture of lease reserved, and perform and observe all the covenants by the lessee and conditions therein contained, and henceforth to be performed and observed in respect of the premises therein comprised other than and except the premises hereinbefore demised. And the said B. doth hereby acknowledge the right of the said C. to production and delivery of copies of the hereinbefore recited indenture of lease, and of the aforesaid indenture of the —— day of ——, and of all mesne assignments of the said lease (*a*). [*Statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c.

PRECEDENT XXXVII.

UNDERLEASE TO A PURCHASER OF PART OF A LEASEHOLD.

Acknowledgment and undertaking as to muniments.

XXXVIII.

CONVEYANCE *of* FREEHOLDS, *and* COVENANT *to* SURRENDER COPYHOLDS *to a* PURCHASER. RESERVATION *of a* RIGHT OF WAY.

PRECEDENT XXXVIII.

OF FREEHOLDS AND COPYHOLDS.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*vendor*], of the one part, and B., of, &c. [*purchaser*], of the other part, WITNESSETH, that in consideration of £—— to the said A. this day paid by the said B. for the purchase of the hereditaments hereinafter granted (the receipt whereof the said A. doth hereby acknowledge), he the said A., AS BENEFICIAL OWNER, doth hereby grant unto the said B., his heirs and assigns, ALL THOSE —— and hereditaments situate in the parish of ——, in the county of ——, delineated in the plan in the margin of these presents and therein coloured ——, and specified in

Parties.

Witnesseth.

Receipt.

Conveyance of freeholds.

(*a*) It may be more convenient that the muniments to be produced should be specified in a schedule.

PRECEDENT XXXVIII.

OF FREEHOLDS AND COPYHOLDS.

Parcels.

Reservation of right of way.

Habendum.

Witnesseth, secondly.

Receipt.

Covenant to surrender copyholds.

Parcels.

the first part of the schedule hereto (*a*), EXCEPT nevertheless and reserving unto the said A., his heirs and assigns and other the owners and occupiers for the time being of the —— estate shown on the said plan or any part thereof, full and free right and liberty at all times hereafter by day or by night, and for all purposes with or without horses, carts, carriages, or waggons, laden or unladen, to go, pass and repass, and to drive cattle, sheep, and other animals along, over, and upon the strip of land or road indicated on the said plan by dotted —— lines, TO HOLD the premises UNTO and TO THE USE of the said B., his heirs and assigns. AND THIS INDENTURE ALSO WITNESSETH, that, in consideration of £—— to the said A. this day paid by the said B., for the purchase of the hereditaments hereinafter covenanted to be surrendered (the receipt whereof the said A. doth hereby acknowledge), he the said A., AS BENEFICIAL OWNER, doth hereby covenant with the said B. (*b*), that he the said A. or his heirs, and all other necessary parties (if any), will forthwith effectually surrender into the hands of the lord of the manor of ——, in the county of ——, according to the custom thereof, ALL THOSE —— and hereditaments situate in the parish aforesaid, delineated in the plan aforesaid and therein coloured ——, and specified in the second part of the schedule hereto (all of which said —— and hereditaments are in the court rolls of the said manor

(*a*) If, as is often the case, the freeholds and copyholds cannot be distinguished, the freehold parcels may run thus:—

"ALL SUCH PARTS of the —— and hereditaments situate in the parish of ——, in the county of ——, delineated in the plan in the margin of these presents, and specified in the schedule hereto, as are of freehold tenure, all which parts, so far as the same are known, are distinguished in same plan by the colour ——, and are indicated in the said schedule."

(*b*) See *supra*, p. 183, n. (*a*).

described as follows—(*a*); (that is to say), [*description from the rolls*] TO THE USE of the said B., his heirs and assigns according to the custom of the said manor, and by and under the accustomed rents, fines, suits, and services (*b*). AND IT IS HEREBY DECLARED, that the aforesaid freehold and copyhold hereditaments were contracted to be sold by the said A. to the said B. at the sum of £—— (the aggregate of the aforesaid sums of £—— and £——), as an entire price for the whole, and that the aforesaid division and apportionment thereof are made only for the purposes of the Act imposing an *ad valorem* stamp duty upon conveyances upon sale (*c*). [*Statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c.

To the use of the purchaser.

Declaration that the price is apportioned for the purposes of the Stamp Act.

THE SCHEDULE above referred to.

Part I. Part II.

(*a*) When the freeholds and copyholds cannot be distinguished, the copyhold parcels may run thus:—

"ALL SUCH PARTS of the said —— and hereditaments delineated in the plan aforesaid, and specified in the schedule aforesaid, as are of copyhold tenure, all which parts, so far as the same are known, are distinguished in the said plan by the colour ——, and are indicated in the said schedule, and in the court rolls of the said manor are described as follows: (that is to say), &c."

(*b*) As to the omission of the declaration of trust formerly inserted here, see *supra*, p. 183, n. (*d*).

(*c*) For another mode of apportioning the purchase-money, see Precedent XXXIX., *infra*.

XXXIX.

PRECEDENT XXXIX.

OF FREEHOLDS, LEASEHOLDS, AND COPYHOLDS.

CONVEYANCE *of* FREEHOLDS *and* LEASEHOLDS, *and* COVENANT *to surrender* COPYHOLDS *to a* PURCHASER.

Parties.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*vendor*], of the one part, and B., of, &c. [*purchaser*], of the other part.

Recital of contract for sale;

WHEREAS [*recital of the lease, and of its being vested in the vendor, supra*, pp. 194, 195]. AND WHEREAS, the said A. has agreed with the said B. for the sale to him, at the price of £ ——, of the freehold hereditaments hereinafter granted, in fee simple in possession, free from incumbrances, and of the copyhold hereditaments hereinafter covenanted to be surrendered, and the inheritance thereof in possession, according to the custom of the manor of which the same are holden, free from incumbrances, except the accustomed rents, fines, suits, and services, and of the said leasehold premises for the residue of the aforesaid term, free from incumbrances.

—of apportionment of purchase-money for the Stamp Act.

AND WHEREAS, for the purposes of the Act imposing an *ad valorem* stamp duty on conveyances on sales, £—— has been apportioned as the price of the said freehold and leasehold hereditaments, and £—— as the price of the said copyhold hereditaments (*a*).

Witnesseth.

Consideration.

Receipt.

Conveyance of freeholds.

NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of £—— [*the whole purchase-money*] to the said A. this day paid by the said B. (the receipt whereof the said A. doth hereby acknowledge), he the said A., AS BENEFICIAL OWNER, doth hereby grant unto the

(*a*) It will be seen that in this Precedent the apportionment for the purpose of the stamp duty is managed differently from the apportionment in Precedent XXXVIII., *supra*, p. 213. If the purchase-money is to be paid to more than one hand, as to a mortgagor and his mortgagee, or by more than one hand, as by a purchaser and his mortgagee, it is inconvenient to do more than state the apportionment in a recital, and no more is required.

said B., his heirs and assigns *freehold parcels, supra*, p. 211], TO HOLD the premises hereinbefore granted UNTO and TO THE USE of the said B., his heirs and assigns. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and for the consideration aforesaid, he the said A., AS BENEFICIAL OWNER, doth hereby covenant with the said B., that he the said A. or his heirs, and all other necessary parties (if any), will forthwith effectually surrender into the hands of the lord of the manor of ——, in the county of ——, according to the custom thereof [*parcels, supra*, p. 212], TO THE USE of the said B., his heirs and assigns, according to the custom of the said manor, and by and under the accustomed rents, fines, suits, and services (*a*). AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and for the consideration aforesaid, he the said A., AS BENEFICIAL OWNER, doth hereby assign unto the said B., his executors, administrators, and assigns. ALL the said - - - hereditaments, and premises by the said indenture of the —— day of —— [*lease*] expressed to be demised (*b*), TO HOLD the premises hereinbefore assigned unto the said B., his executors, administrators, and assigns for the residue of the said term of - - years, at the rent reserved by and subject to the covenants by the lessee, and conditions contained in the said lease, and henceforth to be performed and observed. [*Covenant by purchaser to pay rent, and observe covenants and indemnify vendor in respect thereof, supra*, pp. 196, 197; *statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c.

Habendum.

Witnesseth, secondly.

Covenant to surrender copyholds, to the use of purchaser.

Witnesseth, thirdly.

Assignment of leaseholds.

Habendum.

THE SCHEDULE above referred to.

Part I. Part II.

(*a*) See *supra*, p. 183, nn. (*a*) to (*d*).
(*b*) See *supra*, p. 196, n. (*a*).

XL.

PRECEDENT XL.

OF FREEHOLDS IN CONSIDERATION OF RENTCHARGE.

CONVEYANCE *of* FREEHOLD BUILDING LAND *in consideration of a* RENTCHARGE (*a*).

Parties. THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*vendor*], of the one part, and B., of, &c. [*purchaser*], of the other part,

Witnesseth. WITNESSETH, that in

Consideration. consideration of the yearly rentcharge hereinafter limited, and of the covenants hereinafter on the part of the said B. contained,

Grant. he the said A., AS BENEFICIAL OWNER, doth hereby grant

Parcels; unto the said B. and his heirs, ALL THAT parcel of land situate in the parish of ——, in the county of ——, and containing —— square yards which is delineated with the abuttals and dimensions thereof on the plan annexed to these presents, and is thereon coloured ——,

—with rights of way; TOGETHER WITH full right for the said B., his heirs and assigns and his and their tenants, servants, workmen, and visitors in common with the said A., his heirs and

(*a*) In some parts of the country it is usual, in the case of land intended for building purposes, to sell land in consideration of a perpetual rentcharge, and in order to effectually secure the payment of the rentcharge, the purchaser is usually made to covenant to erect buildings of a certain value, and keep them up. A covenant to insure, and a power of re-entry by the vendor on non-performance of the building covenants, are believed to have become also usual, and are inserted accordingly. As to the effect of a disclaimer of land subject to such a rentcharge by the trustee in bankruptcy of the owner, see *Re Mercer and Moore*, 14 Ch. D. 287. And as to the meaning of the word "rentcharge," see *Re Lord Gerard and Beecham's Contract*, [1894] 3 Ch. 295. In *Hartley* v. *Maddocks*, [1899] 2 Ch. 199, the purchaser was evicted by title paramount from a part of the land granted, and the rentcharge was held apportionable according to the respective values of the properties at the date of the eviction. In the case of land situate in a district in which registration is compulsory, see the observations, *supra*, p. 100.

assigns and his and their tenants, servants, workmen, and visitors, and others for the time being having by grant from the said A., his heirs or assigns or otherwise, the like right to pass and repass at all times and for all purposes with or without horses, carts, and carriages over and along the adjoining road called —— Road and over and along the several other roads shown on the said plan and belonging to or intersecting the estate called the —— estate, the boundaries whereof are indicated on the said plan by a border line of ——, AND together with the right at all times hereafter to use in common with the said A., his heirs and assigns and others for the time being having by grant from the said A., his heirs or assigns or otherwise the like right the sewer under the said road called —— Road (*a*), TO HOLD the premises hereby granted UNTO the said B. and his heirs, TO THE USE that the said A., his heirs and assigns, may henceforth receive a yearly rentcharge, of £——, to be charged upon and payable out of the said parcel of land, and to be paid by equal half-yearly payments on the —— day of ——, and the —— day of —— in every year without deduction, the first half-yearly payment thereof to be made on the —— day of —— next (*b*); AND SUBJECT and charged as aforesaid TO THE USE of the said B., his heirs and assigns (*c*); AND

—and sewerage.

Habendum.

To use, that vendor may receive a perpetual rentcharge;

—and subject thereto, to the purchaser in fee.

(*a*) The road and sewer are assumed to have been made.

(*b*) The powers of distress and entry formerly expressly given in limitations of rentcharges are omitted in reliance on the Conv. Act, 1881 (App. IV. *infra*), s. 44.

(*c*) It is thought that the following clause, though possibly not usual, ought generally to be inserted here, for the power referred to in effect enables the land charged to be summarily sold on default being made in payment of the rentcharge, and this is seldom or never intended. See the remarks as to the section, *supra*, p. 62. It will be proper to insert a corresponding clause in an agreement for a sale for a similar consideration. A sale can, however, be obtained on application to the Court (*White* v. *James*, 26 Beav. 191; *Horton* v. *Hall*, L. R. 17 Eq. 437, and *Scottish Widows' Fund* v. *Craig*, 20 Ch. D. 208; *Northern Assurance Co.* v. *Harrison*, W. N.

PRECEDENT XL.

OF FREEHOLDS IN CONSIDERATION OF RENTCHARGE.

THE SAID B. doth hereby, for himself and his assigns, covenant and grant (*a*) with and to the said A., his heirs and assigns, that he, the said B., his heirs, executors, administrators, or assigns, will henceforth pay the said yearly rentcharge at the times and in the manner aforesaid (*b*); AND will forthwith erect and for ever maintain

Covenants by purchaser to pay the rentcharge; —and to fence

1889, pp. 58, 74; *Re Tucker*, [1893] 2 Ch. 323; *Hambro* v. *Hambro*, [1894] 2 Ch. 564 (a case of a jointure rentcharge); and *Blackburne* v. *Hope-Edwardes*, [1901] 1 Ch. 419, where the existence of a term created for securing the rentcharge was held inconsistent with the right to have a sale of the inheritance. As to tithe rentcharge, see *Bailey* v. *Badham*, 30 Ch. D. 84).

Exclusion of sub-sect. 4 of sect. 44 of the Conv. Act, 1881.

"AND IT IS HEREBY DECLARED that the power given by sub-sect. 4 of sect. 44 of the Conveyancing and Law of Property Act, 1881, of demising the land charged for a term of years on trust as therein mentioned for securing payment of an annual sum charged, shall not be applicable to or exercisable in respect of the said yearly rentcharge hereinbefore limited."

(*a*) This word is used with special reference to the contribution referred to in the final covenant. See *Austerberry* v. *Corporation of Oldham*, 29 Ch. D. 750. That contribution might, however, in some cases be conveniently reserved by way of rentcharge in the limitation of uses.

(*b*) This covenant is retained, as giving the vendor an additional remedy against the purchaser for recovery of the rentcharge. It has been decided that, since the abolition of real actions by 3 & 4 Will. IV. c. 27, an action of debt for recovery of a rent-charge will lie against the owner of the land charged. (*Thomas* v. *Sylvester*, L. R. 8 Q. B. 368; *Whitaker* v. *Forbes*, L. R. 10 C. P. 583, 1 C. P. D. 51; *Searle* v. *Cooke*, 43 Ch. 519; *Pertuee* v. *Townsend*, [1896] 2 Q. B. 129, where it was decided that the liability is for the whole debt irrespective of the amount of the annual profits of the land charged; *Foley's Charity Trustees* v. *Dudley Corporation*, [1910] 1 K. B. 317, where the land charged was a highway; but see *Re Blackburn Society*, 42 Ch. D. 343; and *Re Herbage Rents, Greenwich*, [1896] 2 Ch. 811, in which it was held that the action did not lie against a tenant for years in occupation of the land charged.) It has not been decided whether such a covenant runs with the land charged

along each side of the said parcel of land a substantial oak fence, or brick or stone wall, not less than five feet or more than eight feet in height; AND will within —— years from the date hereof, at his or their own expense, build and finish upon the said parcel of land one and not more than one good and substantial dwelling-house with suitable coach-houses, stabling, offices, drains, and appurtenances thereto which, when finished, shall be of the clear yearly value of £—— at the least; AND the said dwelling-house, coach-houses, stabling, offices, and appurtenances (hereinafter referred to as the said dwelling-house and its appurtenances) when so built and finished, will at all times repair, and keep in good condition, and of such yearly value as aforesaid, and adequately insured against loss or damage by fire (*a*); AND will on demand produce the policy or policies of such insurance, and the receipt for the current year's premium in respect thereof to the said A., his heirs or assigns; AND also will build and finish the said dwelling-house and its appurtenances in accordance with the regulations and specifications set forth in the schedule hereto (*b*) and to the satisfaction

and within a given time to build one house with stables, &c., on the land;

—and keep the same in repair and insured and to produce the policies;

—to build and finish dwelling-house, stables, &c., according to schedule;

(as to which point see the note to *Spencer's Case*, Smith's L. C. vol. i.). The covenant is therefore entered into with the covenantee, his heirs and assigns, notwithstanding sect. 58 of the Conveyancing and Law of Property Act, 1881. See also, as to the form of the covenant, sect. 59 of the same Act.

(*a*) As to the effect and obligation of covenants as to building and similar covenants in a conveyance in fee, see Davidson's Prec. Conv., 4th ed., vol. ii., pt. i., p. 510, n (*y*), and Dart, V. & P., 7th ed., pp. 767 *et seq.*, and cases there cited; also Williams, V. & P. pp. 426—432. The assignee of the grantee of the land is not liable to the assignee of the grantee of the rentcharge on the covenants to repair. *Haywood* v. *Brunswick Permanent Society*, 8 Q. B. D. 403. But see *Andrew* v. *Aitken*, 22 Ch. D. 218; and as to negative covenants, *Re Nisbet and Potts' Contract*, [1906] 1 Ch. 386.

(*b*) The schedule should refer to the building line (if any), and prescribe the materials and mode of construction. Compare Precedent XLII., *infra*, and the first schedule to that Precedent.

PRECEDENT XL.

OF FREEHOLDS IN CONSIDERATION OF RENTCHARGE.

in all things of the surveyor for the time being of the said A., his heirs or assigns, owner or owners for the time being of the mansion-house marked —— on the said plan (*a*); AND will not erect or suffer to be erected on the said parcel of land any building except the said dwelling-house and its appurtenances hereinbefore covenanted to be erected, or make or suffer to be made any alteration in the elevation or architectural design of the said dwelling-house and its appurtenances without the previous licence in writing of the said A., his heirs or assigns, owner or owners as aforesaid; AND will not do or suffer to be done upon the said parcel of land or the said dwelling-house and its appurtenances or any part thereof anything which may be or become a nuisance or an annoyance to the said A., his heirs or assigns, or the owners or occupiers for the time being of the residue of the said —— estate or any of them; AND will not use the said parcel of land or the said dwelling-house and its appurtenances or any part thereof for any trade, business, or profession or otherwise than as a private dwelling-house and appurtenances thereto without the previous licence in writing of the said A., his heirs or assigns, owner or owners as aforesaid; AND also will, until the said road called —— Road and the sewer under the same shall be taken over by the parish or other public authority, contribute and pay at such time and in such manner as the surveyor for the time being of the said A., his heirs or assigns, owner or owners as aforesaid, shall direct a proper proportion of the expenses of repairing and maintaining the said road (including the footpaths) and sewer under the same, such proportion to be from time to time ascer-

—not to alter them;

—not to commit nuisance;

—or use them otherwise than as a private residence;

—and to contribute to the maintenance of road and sewer.

(*a*) Where (as is assumed in this Precedent) the land forms part of a building estate, it is convenient that covenants of this description should be entered into with the grantee, as owner of some particular portion of the estate, so that the general control of the estate may, as far as possible, go with that portion, and remain in one hand. See *Everett* v. *Remington*, [1892] 3 Ch. 148.

tained by the said surveyor and to be recoverable by the said A., his heirs and assigns, owner or owners as aforesaid by any of the ways and means by which the same would have been recoverable if the same had formed part of the said rentcharge hereinbefore limited and were in arrear (*a*), PROVIDED ALWAYS, and it is hereby declared and these presents are upon this express condition that in case at any time during the joint lives of the said parties hereto, or the life of the survivor of them, or within twenty-one years from the death of such survivor (*b*), there shall be a breach of any of the covenants hereinbefore contained on the part of the said B., in relation to the said parcel of land or the said dwelling-house and its appurtenances, or in relation to the policy or policies aforesaid, then if and whenever the same shall happen

Proviso for re-entry on breach of covenants;

(*a*) If the road and sewer be not made, a covenant to make and maintain both, or, as the case may be, a moiety of both, may be substituted. But this arrangement is inconvenient, unless the land sold comprises the whole road for some distance and the sites on both sides, in which case (it should be remembered) there must in the operative part be a reservation of the vendor's rights over the road and sewer when made.

(*b*) The restriction is intended to avoid any question as to the invalidity of the powers as tending to a perpetuity. Compare the form, pp. 204, 205, *supra*; and see on this point, *Ex parte Ralph*, 1 De G. 219; Sugden on Vendors, 14th ed., p. 596; *London and South-Western Railway Company* v. *Gomm*, 20 Ch. D. 562 (explained in *Mackenzie* v. *Childers*, 43 Ch. D. 265, a case on a building scheme); *Dunn* v. *Flood*, 25 Ch. D. 629; 28 Ch. D. 586; *Re the Trustees of Hollis' Hospital and Hague's Contract*, [1899] 2 Ch. 540. It should be observed that in the last case the original disposition was in favour of a charity, and the gift over was to the right heirs of the settlor, in the event of the property being converted to other uses. It would appear that, though the perpetuity rules do not apply to the transfer of property from one charity to another, they extend to the case of a transfer of property from a charity to an individual and *vice versâ*. See *Re Bowen*, [1893] 2 Ch. 491; *Worthing Corporation* v. *Heather*, [1906] 2 Ch. 532. As to how far the rules against perpetuities are binding on the Crown, see *Cooper* v. *Stuart*, 14 App. Cas. 286.

PRECEDENT XL.

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during the period aforesaid, and also (if the law will permit (*a*)) if and whenever the same shall happen after the expiration of that period, it shall be lawful for the said A., his heirs or assigns, owner or owners for the time being of the said rentcharge hereinbefore limited into and upon the said parcel of land and the said dwelling-house and its appurtenances or any part thereof in the name of the whole to enter; WITH LIBERTY on each occasion of his or their so entering to do any act which may be requisite specifically to perform the said covenants on the part of the said B. hereinbefore contained, AND to continue in possession of the said premises until the said B., his heirs or assigns, shall have reimbursed to the said A., his heirs or assigns, all the reasonable costs and expenses which he or they shall necessarily or properly incur in or about the doing of any such act as aforesaid, together with interest thereon, at the rate of £5 per cent. per annum from the time or respective times of the same having been paid by the said A., his heirs or assigns, or until the same shall have been satisfied out of the rents and profits of the same premises (*b*). [*Statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c.

—with power to specifically perform the covenants,

—and to retain possession until the costs are reimbursed.

THE SCHEDULE above referred to.

(*a*) As to these words, see *Davies* v. *Davies*, 36 Ch. D. 359.

(*b*) An acknowledgment and undertaking as to deeds should be added, if it be required and be not taken by a separate instrument. It should be noticed that a conveyance of this kind has many points in common with a building lease, which is often preferred, and, if for a sufficiently long term, is perhaps more convenient for both parties.

The following is a form of a power to redeem the rentcharge :—

Power to redeem rentcharge.

" PROVIDED ALWAYS, and it is hereby declared, that, if the said B., his heirs or assigns, shall at any time during the joint lives of the parties hereto, or the life of the survivor of them, or within twenty-one years after the

death of such survivor, be desirous of redeeming the said yearly rentcharge of £——, and of such desire shall give three months' previous notice in writing to the said A., his heirs or assigns, then the said A., his heirs or assigns, will, upon the expiration of the said three months, on receiving from the said B., his heirs or assigns, full payment of the said yearly rentcharge, and all arrears thereof up to and including the day of redeeming the same, and all sums of money (if any) which shall be then due for or on account of any such costs or expenses as aforesaid, accept the sum of £—— in full for the redemption of the said yearly rentcharge of £——, and will thereupon, at the request and cost of the said B., his heirs or assigns, release or otherwise dispose of the said yearly rentcharge unto the said B., his heirs or assigns, or unto such other persons as he or they shall direct."

There will be no difficulty in framing from the foregoing Precedent (with the aid of the following observations) a like conveyance on sale of a parcel of land forming part of a larger parcel held subject to a rentcharge. In such a conveyance the parcel conveyed would be described as part of the larger parcel shown by a coloured edging in the plan which was conveyed to the vendor, subject to a rentcharge and covenants as expressed in Precedent XLI., and a reference to the buildings (if any) erected on the smaller parcel would be added, as in that Precedent. The purchaser would covenant to pay the new rentcharge, and to perform the covenants in the former conveyance so far as they relate to the smaller parcel, except the covenant for payment of the original rentcharge, and to indemnify the vendor accordingly; and the vendor would covenant to pay the original rentcharge, and to perform the covenants in the former conveyance so far as they relate to the remainder of the larger parcel, and to indemnify the purchaser accordingly, and would grant to the latter a power of distress upon such remainder of the larger parcel in respect of any payments which he may be obliged to make to the owner of the original rentcharge or otherwise under the original grant, with which might be incorporated a power to retain the amount of any such payments out of the new rentcharge. See Precedent XXXV., *supra*, and the Precedent, *infra*, of an underlease at an advanced rent.

XLI.

PRECEDENT XLI.

OF FREEHOLD LAND SUBJECT TO RENTCHARGE.

CONVEYANCE *of* FREEHOLD LAND SUBJECT *to a* RENTCHARGE (*a*).

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*vendor*], of the one part, and B., of, &c. [*purchaser*], of the other part, WITNESSETH, that in consideration of £—— to the said A. this day paid by the said B. for the purchase of the fee simple of the hereditaments hereinafter granted, subject as hereinafter mentioned (the receipt whereof the said A. doth hereby acknowledge), he the said A., AS BENEFICIAL OWNER, doth hereby grant unto the said B., his heirs and assigns [*parcels, ut supra*, p. 216, *down to the reference to the colour*], Together with the dwelling-house and buildings erected thereon, known as ——, TO HOLD the premises UNTO and TO THE USE of the said B., his heirs and assigns, subject to a yearly rentcharge of £——, by an indenture dated the —— day of ——, and expressed to be made between M. N. of the one part, and X. Y. of the other part, limited to the use of the said M. N., his heirs and assigns, and to the covenants on the part of the said X. Y. and provisions in the same indenture contained in relation to the repair, maintenance, and insurance of the said dwelling-house and buildings and otherwise; AND the said B. doth hereby covenant with the said A. that the said B., his heirs or assigns, will henceforth pay the said yearly rentcharge of £—— limited by, and perform and observe all the covenants on the part of the said X. Y. contained in the said indenture of the —— day of —— and henceforth to be performed and observed, and keep the said A., his heirs, executors,

Parties.

Witnesseth.

Consideration.

Receipt.

Conveyance.

Parcels.

Habendum.

Subject to the rentcharge and covenants.

Covenant by purchaser to pay the rentcharge and perform the covenants (*b*).

(*a*) As to land situate in a district where registration is compulsory, see the observations, *supra*, pp. 97, 100, 104.

(*b*) See *Harris* v. *Boots Cash Chemists* (*Southern*), *Limited*, [1904] 2 Ch. 376.

and administrators, indemnified against all actions, proceedings, costs, damages, claims, demands, and liability for non-payment of the said rent-charge, or breach of the said covenants or any of them. [*Statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS. &c.

PRECEDENT XLI.
OF FREEHOLD LAND SUBJECT TO RENTCHARGE.

XLII.

CONVEYANCE *of a* BUILDING PLOT (*a*).

PRECEDENT XLII.
OF A BUILDING PLOT.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. (hereinafter called the vendor), of the one part, and B., of, &c. (hereinafter called the purchaser), of the other part, WITNESSETH, that in consideration of £— now paid to the vendor by the purchaser for the purchase of the fee simple of the hereditaments hereinafter granted, subject as hereinafter expressed (the receipt whereof the vendor doth hereby acknowledge), the vendor as BENEFICIAL OWNER doth hereby grant unto the purchaser, his heirs and assigns, ALL THAT parcel of land situate at or near —— in the county of ——, particularly delineated with the abuttals and the linear dimensions as nearly as may be thereof, and described on the plan drawn on or annexed to these presents, and thereon edged with a verge line of —— and marked ——, the same being part of the —— estate as shown on the —— estate map (*b*) of the vendor marked ——, from which the said plan is extracted, TOGETHER WITH the right of using for all ordinary purposes in common with the vendor, his heirs and

Parties.
Witnesseth.
Consideration.
Receipt.
Operative words.
Parcels;
—with right of using roads, &c.;

(*a*) Compare Precedent XL.

(*b*) It is often desirable to indicate the area to which the building stipulations apply. This may be done by showing the estate on a small scale in the margin of the plan to the deed; and in that case it will suffice to say "shown on the said plan."

PRECEDENT XLII.

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assigns, and all other persons having or by grant from the vendor, his heirs or assigns, or otherwise acquiring the like right, the road delineated on the said plan, and thereon coloured ——, and known or intended to be known as —— Road so far as the same forms part of the said —— estate, and all other roads made and opened, or which shall hereafter be made and opened for general use upon the same estate and the footpaths thereof, and the sewers, drains, and water-courses within and under the same respectively; AND TOGETHER also with the benefit of the restrictive and other stipulations set forth in the first schedule hereto (*a*),

—and of building restrictions applicable to the estate.

(*a*) In the schedule referred to are set out the stipulations relating to the whole estate, and it is submitted that this is the proper course. Sometimes—perhaps more frequently—only those relating to the purchased plot are set out, and in such a case the following clause may be substituted for that in the text relating to building restrictions:—

"AND TOGETHER also with the benefit, so far as the vendor can grant the same, of all restrictions which have been or shall hereafter be imposed by the vendor, his heirs or assigns, upon the respective purchasers of other parts of the said estate for the common or general advantage thereof [but not so as to impose upon the vendor, his heirs or assigns, any obligation to enforce, or so as to preclude him or them from releasing or waiving such restrictions or any of them]."

See as to the position and reciprocal rights and obligations of purchasers under a general building scheme, and also where there is no general scheme, but various persons purchase from the same vendor, and each of them enters into similar covenants, the benefit of which is annexed to the lands purchased by the others, *Reid* v. *Bickerstaff*, [1909] 2 Ch. 305, and cases there cited. In *Re Birmingham and District Land Company* v. *Allday*, [1893] 1 Ch. 342, it was held that the vendor under a building scheme was bound to observe, as to unsold lots, the stipulations imposed upon the purchasers of lots sold, and that the purchasers were entitled to have such obligation of the vendor expressed in their conveyances.

so far as the same respectively relate to or affect the remainder of the said estate; EXCEPT AND RESERVED unto the vendor, his heirs and assigns, and all other persons having or by grant from the vendor, his heirs or assigns, or otherwise acquiring the like right, but in common with the purchaser, his heirs and assigns, the right of using for all ordinary purposes [so much of the said parcel of land as on the said plan is coloured ——, being that portion thereof which forms or is intended to form part of (*a*)] —— Road aforesaid, and the footpaths thereof, and the sewers, drains, and watercourses within and under the same; [AND EXCEPT AND RESERVED unto the vendor, his heirs and assigns, the rights necessary for making up and completing, if he or they shall think fit so to do, the same road, and making and laying thereunder sewers, drains, and watercourses, and water and gas and electric and other pipes and conveniences (*b*)], TO HOLD the premises unto and to the use of the purchaser, his heirs and assigns, subject to the restrictive and other stipulations set forth in the schedule hereto, so far as the same relate to or affect the said parcel of land hereinbefore granted; AND the purchaser, to the intent that the covenant hereinafter on his part contained may bind the said premises hereinbefore granted and the successive owners thereof from time to time and their respective estates (but not so as to bind personally any such owner or his estate

Reservation of rights over road

and of making road, and laying pipes, &c.

Habendum to purchaser in fee subject to stipulations in schedule.

Covenant by purchaser to observe stipulations in schedule.

(*a*) In the draft from which this Precedent was taken, a moiety of so much of the road as abutted on the plot was coloured on the plan, and included in the conveyance, and this reservation was desirable for that reason. Ordinarily no part of the road is expressly included, and probably under such circumstances the whole reservation may be omitted with safety, regard being had to the form of the grant of a right of way, and to the general scheme.

(*b*) This reservation would be generally omitted. See the last preceding note. Commonly it is stipulated that the purchaser shall contribute to the expenses of repairing the road until taken over by the local authority, and if that be intended a provision accordingly (see p. 220, *supra*) should be inserted in the schedule.

PRECEDENT XLII.

OF A BUILDING PLOT.

in respect of anything done or omitted after he shall have disposed of the fee simple of the same premises), and also may enure for the benefit of the remainder of the said estate and the successive owners thereof from time to time, doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the vendor, his heirs and assigns, owner or owners for the time being of the remainder of the said —— estate, or any part thereof, that the purchaser, his heirs and assigns, will at all times hereafter perform and observe the stipulations set forth in the said first schedule hereto, so far as the same relate to or affect the said parcel of land hereinbefore granted [and keep indemnified the vendor, his heirs and assigns, from and against all actions, accounts, claims, demands, and liabilities for or in respect of any breach thereof];

Acknowledgment and undertaking as to muniments.

AND the vendor doth hereby acknowledge the right of the purchaser to the production and delivery of copies of the muniments of title in the possession of the vendor, which are specified in the second schedule hereto, and undertake for the safe custody thereof. [*Statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c.

THE FIRST SCHEDULE above referred to.

1. EVERY purchaser shall forthwith make and for ever maintain proper boundary walls or fences not exceeding —— feet nor less than —— feet in height on the plot or plots purchased by him on the sides marked ⊤ on the — — estate map of the vendor marked —— (*a*).

2. No house or building other than a private dwelling-house with or without appropriate coach-houses and stabling, motor-car or cycle houses and greenhouses, shall be erected on any plot, and no house or other building

(*a*) More elaborate provisions on this point will often be needed.

shall be erected except in such situation and position as shall have been previously indicated to and approved of in writing by the vendor or otherwise than in conformity with plans, elevations, and specifications which shall have been previously submitted to and approved of in writing by him, nor shall any alteration therein or addition thereto be made without the like approval previously obtained. No excavation shall be made on any plot except such as may be necessary for the buildings to be erected thereon, nor shall any gravel, earth, or other material be removed therefrom without the previous consent in writing of the vendor.

3. No house to be erected pursuant to the preceding stipulation shall be on plots —— of less value than £——, or on plots —— of less value than £——, such value being in every case exclusive of outbuildings. The value of a building is the amount of its net first cost in materials and labour of construction only, estimated at the lowest current prices.

4. THE line of frontage of the buildings on the several plots shall not approach nearer the road or roads than the line (if any) marked "building line" on the map, except as regards porticoes and bay windows, or similar structures which shall not project more than four feet beyond such line.

5. THE plots shall not nor shall any building erected on any of them be used as a hospital, or for any offensive, noisy, or dangerous pursuit or operation, or for any purpose which shall be a nuisance or annoyance to the vendor or the owners or occupiers of any other part or parts of the said estate or any of them, or for any trade or business, and no building erected shall be used otherwise than as a private dwelling-house, or as a coach-house or stabling, motor-car or cycle house or greenhouse connected therewith. No operative machinery or hut, shed, caravan, outdoor sleeping apartment, or other like structure or

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OF A BUILDING PLOT.

erection shall be fixed or placed on any plot except with the previous approval in writing of the vendor. And no portion of any plot shall be used as a road or way from or to any land adjoining or adjacent to the estate of the vendor.

6. ANY question which may arise as to the value of any house built or otherwise under or in connection with these stipulations shall be determined by the vendor's surveyor for the time being, whose decision shall be absolutely binding and conclusive.

7. NOTHING hereinbefore contained shall oblige the vendor to observe or enforce the foregoing stipulations or any of them in respect of any of the plots [or preclude him from waiving such stipulations or any of them in respect of any plot or plots, and he shall be at liberty, if he shall think fit so to do, effectually to release any plot or plots from such stipulations or any of them].

8. IN these stipulations the expression "vendor" includes his heirs and assigns, owners of any part of the —— estate for the time being remaining unsold, and the expression "purchaser" includes his heirs and assigns (*a*).

THE SECOND SCHEDULE above referred to.

[*To specify the muniments* (*b*).]

(*a*) Compare the conditions XXVIII. to XXX., pp. 129, 130, *supra*, and as to 7, see *Whitehouse* v. *Hugh*, [1906] 1 Ch. 253; 2 Ch. 283; and as to the enforcement of restrictive covenants generally, *Elliston* v. *Reacher*, [1908] 2 Ch. 374; affirmed, *ib.* 665.

(*b*) Including the estate plan.

XLIII.

Assignment *of a* Policy *of* Assurance.

Precedent XLIII.

OF A POLICY OF ASSURANCE.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*vendor*], of the one part, and B., of, &c. [*purchaser*], of the other part, WITNESSETH, that in consideration of £——, to the said A. this day paid by the said B. (the receipt whereof the said A. doth hereby acknowledge), he the said A. AS BENEFICIAL OWNER doth hereby assign unto the said B., his executors, administrators, and assigns, ALL THAT policy of assurance on the life of him the said A. granted by the —— Assurance Society, dated the —— day of ——, numbered ——, for the sum of £——, and under the annual premium of ——; AND all monies assured or to become payable by or under the said policy and the full benefit thereof (*a*), TO HOLD the premises unto the said B., his executors, administrators, and assigns; AND the said A. doth hereby covenant with the said B., that he the said A. will not do or knowingly suffer anything whereby the said policy may be rendered void or voidable, or the said B., his executors, administrators, or assigns may be prevented from receiving the said sum of £——, or any bonuses or additions thereto, or any part thereof respectively (*b*); AND THAT, if the said A. shall do or suffer anything whereby any additional premium

Parties.

Witnesseth.

Consideration.

Receipt.

Assignment.

Parcels.

Habendum.

Covenants by vendor not to avoid the policy;

—and to pay additional premiums if incurred.

(*a*) It was formerly considered proper, having regard to "The Policies of Assurance Act, 1867" (30 & 31 Vict. c. 144), to include in any assignment of a policy an express power to give receipts, so as to bring the assignee within the precise terms of sect. 1 of that Act; but the practice has been discontinued.

(*b*) That this is a proper covenant to be inserted, and generally, as to the law relating to Policies of Assurance and their assignment, see Davidson's Prec. Conv., vol. ii. pt. i. 4th ed. p. 654, n. (*a*), and pt. ii. 4th ed. pp. 122 *et seq.* The other covenants usual on assignments of policies are supplied by the Conv. Act, 1881 (App. IV., *infra*), s. 7.

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or payment shall become payable for keeping the said policy in force, then he, the said A. will, at all times, duly and punctually pay such additional premium or payment, so as to keep the said policy in force. [*Statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c. (*a*).

XLIV.

PRECEDENT XLIV. OF LETTERS PATENT.

ASSIGNMENT *of* LETTERS PATENT (*b*).

Parties.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*vendor*], of the one part, and B., of, &c. [*purchaser*], of the other part. WHEREAS, by letters patent, under the

(*a*) Notice of the assignment of the policy should be given to the office by which it is granted. Under "The Policies of Assurance Act, 1867," after the giving of such notice the assignee will be entitled to sue in his own name at law for the monies assured. See, too, sect. 25, sub-sect. 6, of the Supreme Court of Judicature Act, 1873, *supra*, p. 66, n. (*a*). An agreement in writing to execute on request a mortgage of a policy deposited as security, was held, in *Spencer* v. *Clarke*, 9 Ch. D. 137, not to be an assignment within this Act. By the Stamp Act, 1891, s. 118, no assignment of a policy of life assurance is to confer on the assignee any right to sue unless the assignment is duly stamped; and no payment is to be made to any person claiming under any such assignment unless duly stamped.

(*b*) See, as to the law respecting patents and assignments of patents, notes in Davidson's Prec. Conv. vol. ii. pt. ii. 4th ed. pp. 130—136, and 629—642; and the Patents and Designs Acts, 1907 (a consolidating Act) and 1908. As to the rights *inter se* of co-owners of a patent, see *Steers* v. *Rogers*, [1893] A. C. 232; as to the effect of granting a licence, *Heap* v. *Hartley*, 42 Ch. D. 461; *London Printing and Publishing Alliance Co.* v. *Cox*, [1891] 3 Ch. 291; *Guyot* v. *Thomson*, [1894] 3 Ch. 388; as to a patent granted to two persons and the nature of their interest, *National Society, &c.* v. *Gibbs*, [1899] 2 Ch. 289; [1900] 2 Ch. 280; as to stamp duty in respect of a licence to use a colonial patent, *Smelting Co. of*

seal of the Patent Office, dated ——, and numbered ——, the licence, power, sole privilege, and authority of making, manufacturing, using, exercising, and vending a certain invention, "for, &c.," within the United Kingdom of Great Britain and Ireland, and Isle of Man, were granted to C. for the term of fourteen years on the conditions therein mentioned. AND WHEREAS by an indenture dated the —— day of ——, and expressed to be made between [*parties*], the said C. assigned unto the said A., his executors, administrators, and assigns, the hereinbefore mentioned invention, and the hereinbefore recited letters patent, together with all privileges, powers, benefits, and advantages whatsoever to the said invention and letters patent belonging, to hold the same unto the said A., his executors, administrators, and assigns, for the residue of the said term of fourteen years, by the said letters patent granted. AND WHEREAS the said A. has agreed to sell the said invention and letters patent to the said B. at the price of £——. NOW THIS INDENTURE WITNESSETH, that in consideration of £—— to the said A. this day paid by the said B. (the receipt whereof the said A. doth hereby acknowledge), HE, the said A., AS BENEFICIAL OWNER, doth hereby assign unto the said B., his executors, administrators, and assigns, ALL THE said invention and letters patent hereinbefore respectively mentioned and recited, and the full and exclusive benefit and advantage thereof respectively, and of any and every extension of the said letters patent, AND ALL rights,

Recital of grant of letters patent.

Of assignment to the vendor.

Of contract for sale.

Witnesseth.

Consideration.

Receipt.

Assignment.

Parcels.

General words.

Australia v. *I. R. Commissioners*, [1896] 2 Q. B. 179; as to what constitutes infringement, *British Motor Syndicate, Limited* v. *Taylor*, [1901] 1 Ch. 122; *Badische, &c. Fabrik* v. *Hickson*, [1905] 2 Ch. 495; [1906] A. C. 419 (vending abroad); as to the position of the purchaser under a distress of a patented article, *British Mutoscope, &c. Co., Limited* v. *Homer*, [1901] 1 Ch. 671; as to priority by registration, *New Ixion, &c. Co.* v. *Spilsbury*, [1898] 2 Ch. 484; and as to a vendor's lien for unpaid royalties, *Dansk, &c.* v. *Snell*, [1908] 2 Ch. 127.

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OF LETTERS PATENT.

Habendum.

powers, and benefits to the said premises, or any of them appertaining, TO HOLD the said premises unto the said B., his executors, administrators, and assigns, for his and their own benefit. AND THE said A. (by way of extension of the covenant herein on his part implied by statute) doth hereby covenant with the said B., that the said letters patent are valid, and in no wise avoided, or avoidable (*a*). [*Statement for purposes of stamp duty, if appropriate, supra*, p. 135.] IN WITNESS, &c.

Covenant by vendor that letters patent are valid.

(*a*) This covenant is not implied under sect. 7 of the Conv. Act, 1881, App. IV., *infra*. The deed must be registered pursuant to sect. 28 of the Patents and Designs Act, 1907.

The following further covenant may be entered into where the patentee is the assignor, and some covenant of the sort is believed to be in that case usual :—

Covenant to make over the benefit of all future inventions by the patentee with respect to the same or similar matters.

"AND FURTHER that if the patentee shall at any time hereafter discover or invent, or otherwise become possessed of any discovery or invention for any improvements in or additions to the said invention hereby assigned, or shall discover or invent, or otherwise become possessed of any discovery or invention for any process for the preparation or improvements in the preparation of ——, or of any —— of a similar nature or possessing the like properties or qualities of —— as the —— in respect whereof the said patent has been granted, or shall obtain any provisional protection for any such discovery or invention, or shall obtain any other British patent for the said invention hereby assigned, or any British patent or patents for any such other discovery or invention as aforesaid, he will forthwith give notice in writing of every or any such discovery or invention, or of the obtaining of any such provisional protection or patent or patents as aforesaid, to the assignee, and the assignee shall have the option, to be exercised within three calendar months from the time when such notice shall have been given, of requiring any such discovery or invention to be made

known to him in all its details, and the further option to be exercised within three calendar months after the same shall have been made known to him in all its details of requiring the full and exclusive benefit and advantage thereof to be made over to him [on payment by him to the patentee of the sum of £——], and also if any such patent or patents as aforesaid shall have been then obtained, of requiring the same to be assigned to the assignee on payment by him of all expenses incurred in or about the obtaining thereof: AND FURTHER that if in respect of any such discovery or invention no such patent or patents as aforesaid shall have been obtained, the assignee shall have the further option, to be exercised within three calendar months from the time when any such discovery or invention shall have been fully made known to him, of requiring the patentee to apply for provisional protection thereof, upon payment by the assignee of the expenses thereby incurred, and shall also have the option, to be exercised during the term of any such provisional protection to be so applied for, or of which, as having been already obtained by the patentee, notice shall have been given by him to the assignee as aforesaid, of requiring the patentee to obtain a grant of a British patent in respect of any such discovery or invention, and to assign such patent, when so obtained, to the assignee on payment by him of the expenses incurred in the obtaining and assignment of such patent: AND FURTHER that the patentee will in all respects, and without any payment or remuneration whatsoever other than the aforesaid [sum of £——, and] expenses, comply with any such requirements of the assignee, and do all such acts and things (as by signing and leaving a complete specification or otherwise) as may be incident to such requirements, or necessary for properly effectuating the same."

The foregoing form is somewhat lengthy, but it may easily be shortened by omitting altogether those parts which relate to

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OF LETTERS PATENT.

patents to be obtained or granted for the original or any new invention, and so shortened will probably be effectual. It is assumed that the assignor is described in the parties as being afterwards called the patentee, and B. as being afterwards called the assignee, and that a corresponding interpretation clause will be added as in the form of a mortgage, Precedent XLV., *infra*, p. 240, *mutatis mutandis*.

When royalties are reserved there should be covenants on the part of the assignee not only to manufacture the goods and pay the royalties, but also to pay any renewal fees, unless (which is the better plan) those fees are satisfied before the assignment. See *Re Railway and Electric Appliances Co.*, 38 Ch. D. 597.

Mortgages.

XLV.

AGREEMENT *for a* MORTGAGE *of* FREEHOLDS (*a*). VARIATIONS *for* REGISTERED LAND.

PRECEDENT XLV.

AGREEMENT FOR MORTGAGE OF FREEHOLDS.

AN AGREEMENT, made the —— day of ——, 19—, BETWEEN A., of, &c. [*mortgagor*] (hereinafter referred to

Parties.

(*a*) This agreement constitutes an equitable mortgage of the property agreed thereby to be mortgaged. In practice such an agreement is always accompanied by a deposit of title deeds, which, though not essential to the creation of an equitable mortgage (*Daw* v. *Terrell*, 33 Beav. 218; and see the observations on that case in *Ex parte Broderick, Re Beetham*, 18 Q. B. D. 766; also *Crone* v. *Hegarty*, 3 L. R. Ir. 50, where transfer of possession of leaseholds without writing or deposit of deeds was held to create an equitable mortgage), constitutes the lender's substantial security, by giving, in ordinary cases, express or constructive notice of the charge to a subsequent purchaser or incumbrancer, from the circumstance of the title deeds not being in the owner's possession.

As to equitable mortgages, see Davidson's Prec. vol. ii. pt. ii. 4th ed. p. 104, notes, and cases there cited. The following cases may also be noted: as to equitable mortgage by mere deposit, *Mason* v. *Morley*, 34 L. J. Ch. 422, and *Re Trethowan*, 5 Ch. D. 559; as to the equitable mortgagee's remedy in equity being by foreclosure, *James* v. *James*, L. R. 16 Eq. 153; *Backhouse* v. *Charlton*, 8 Ch. D. 444; *Lees* v. *Fisher*, 22 Ch. D. 283; *Sadler* v. *Worley*, [1894] 2 Ch. 170; *Harrold* v. *Plenty*, [1901] 2 Ch. 314; or by sale where there is an agreement to execute a legal mortgage, *York Union Banking Co.* v. *Artley*, 11 Ch. D. 205, and perhaps in other cases, *Sadler* v. *Worley*, *ubi supra*; but see *Re Oven*, [1894] 3 Ch. 220, 227; or by obtaining execution of a legal mortgage, *Ashton* v. *Corrigan*, L. R. 13 Eq. 76; *Hermann* v. *Hodges*, L. R. 16 Eq. 18, and see also *Marshall* v. *Shrewsbury*, L. R. 10 Ch. 250.

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as the mortgagor), of the one part, and B., of, &c. [*mortgagee*] (hereinafter referred to as the mortgagee), of the

An equitable mortgagee by deposit of personal chattels is not entitled to foreclosure, *Carter* v. *Wake*, 4 Ch. D. 605; but the rule does not apply to a security with power of sale on railway shares actually transferred, *General Credit and Discount Co.* v. *Glegg*, 22 Ch. D. 549, and see *Sadler* v. *Worley* and *Harrold* v. *Plenty*, *ubi supra;* as to the security being limited to property specified in an agreement or memorandum accompanying deposit, though the deeds deposited include other property, see *Wylde* v. *Radford*, 33 L. J. Ch. 51. But as to the remedies of mortgagees generally, see now sect. 25 of the Conv. Act, 1881, App. IV., *infra*, and see observations, p. 49, *supra*. As to the order of priority of equitable incumbrances, the cases of *Union Bank of London* v. *Kent*, 39 Ch. D. 238; *Farrand* v. *Yorkshire Banking Co.*, 40 Ch. D. 182; *Carritt* v. *Real and Personal Advance Co.*, 42 Ch. D. 263; *Re Richards*, 45 Ch. D. 589; *Re Ingham*, [1893] 1 Ch. 352; *Re Valletort Steam Laundry Co., Limited*, [1903] 2 Ch. 654; and the recent case of *Walker* v. *Linom*, [1907] 2 Ch. 104, may be referred to; and compare *Taylor* v. *Russell*, [1892] A. C. 244, in which it does not seem to have been noticed that the efficacy of the instrument under which the respondent claimed the legal estate was at least doubtful.

Other forms of instruments for creating equitable mortgages, *i.e.*, a more formal agreement by deed, and a simple memorandum to accompany deposit of deeds, will be found in the two following Precedents.

In this (as in the last preceding) edition, throughout the precedents of mortgages, the parties are defined according to their respective characters as "mortgagor" and "mortgagee" or "mortgagors" and "mortgagees" as the case may be. From the similarity of these words there is no doubt a risk of their being transposed, and the words "borrower" and "lender" or "borrowers" and "lenders" may (if thought fit) be substituted. But the risk referred to appears in practice to be slight. The references which in former editions were generally made to the representatives of the parties are now supplied for the most part by an interpretation clause, which, though not absolutely accurate, appears to be sufficient. This method (adopted in former editions to a limited extent) has seemed to the editors to afford the most convenient way of shortening the mortgage forms, and to be justifiable in the present work, though it may be difficult to defend on

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AGREEMENT FOR MORTGAGE OF FREEHOLDS.

other part. IN consideration of £—— this day advanced by the mortgagee to the mortgagor, HE the mortgagor hereby agrees to pay to the mortgagee, on the —— day of —— next (*a*) the sum of £—— (*b*), with interest for the same in the meantime at the rate of £— per cent. per annum. AND IF the said sum of £——, or any part thereof shall remain unpaid after that day to pay to the mortgagee, so long as the same sum or any part thereof shall remain unpaid, interest at the rate aforesaid for the sum so remaining unpaid by equal half-yearly payments. AND ALSO that he the mortgagor, and all other necessary parties (if any), will at any time, while the said sum of £—— or any part thereof shall remain unpaid, at his own expense, if and when so required to do by the mortgagee, make and execute a valid mortgage in fee simple free from incumbrances [registered charge (*d*)] of ALL THAT farm known as —— Farm, situate at ——, in the county of ——, and containing —— acres, or thereabouts [*or parcels*, p. 149, *supra*], and of all other (if any), the hereditaments comprised in the several title deeds [land certificate] mentioned in the schedule hereto, to the mortgagee, for securing the payment of the principal sum so then remaining unpaid, with interest for the

Consideration.

Agreement for payment of principal and interest.

To execute mortgage (*c*):

—of parcels.

general principles. When an interpretation clause is used, care should be taken not in the body of the instrument to repeat the definition or any part of the definition, or to introduce words inconsistent with it. (See *Clegg* v. *Hands*, 44 Ch. 503; *Birmingham Breweries* v. *Jameson*, [1898] W. N. 15; *ib.* 145.)

(*a*) Six calendar months from the date of the deed.

(*b*) The principal sum advanced.

(*c*) As to this agreement, see *Farmer* v. *Pitt*, [1902] 1 Ch. 954.

(*d*) The words in square brackets in this Precedent are for use where the title is registered under the Land Transfer Acts, 1875 and 1897. See p. 98, *supra*. In such a case the land certificate will of course be handed over, and a caution should be lodged under sect. 53 of the Act of 1875: see Rules 226 to 233. And where the land, though not registered, is situate in a district where registration is compulsory, a caution against first registration should be lodged under sect. 60 of the Act of 1875: see Rules 88 to 94.

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same at the rate aforesaid, such mortgage to contain [charge to be in such form and to be accompanied, if the mortgagee shall so require, by a deed containing] such usual mortgage covenants and provisions suitable to the nature of the premises as the mortgagee shall require. AND THAT until the said mortgage shall be made and executed, the premises hereby agreed to be mortgaged shall be and remain a security to the mortgagee for, and be charged with, the payment to him of the said sum of £—— and interest as aforesaid. PROVIDED ALWAYS that unless such an interpretation is inconsistent with the context, the expression "the mortgagor" hereinbefore used shall include his heirs, executors, administrators, and assigns, and the expression "the mortgagee" hereinbefore used shall include his executors, administrators, and assigns. IN WITNESS, &c.

That the premises shall be charged in the meantime with the mortgage debt.

Interpretation clause (*a*).

THE SCHEDULE above referred to (*b*).

XLVI.

AGREEMENT *for a* MORTGAGE *of* LEASEHOLDS (*c*).

PRECEDENT XLVI.

AGREEMENT FOR MORTGAGE OF LEASEHOLDS.

THIS INDENTURE, made the —— day of ——, 19– , BETWEEN A., of, &c. [*mortgagor*] (hereinafter called

Parties.

(*a*) A clause of this description seems desirable, though possibly not necessary. See ss. 58, 59, and 60 of the Conv. Act, 1881, App. IV., *infra*. Of course, notwithstanding the insertion of such a clause, proper words of limitation must be used in the habendum of a mortgage of freeholds, and in the corresponding parts of a mortgage of copyholds, and it is better to use like words with respect to the re-conveyance stipulated for by the proviso for redemption. The words "and the necessary modifications of expressions connected therewith respectively are implied" are sometimes added, and the addition seems technically justifiable and correct.

(*b*) To contain a list of deeds deposited.

(*c*) The principal advantage of this agreement over that in the preceding Precedent is that, being by deed, it will create such a charge on the property agreed to be mortgaged as to give the

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AGREEMENT FOR MORTGAGE OF LEASEHOLDS.

the mortgagor), of the one part, and B., of, &c. [*mortgagee*] (hereinafter called the mortgagee), of the other part, WITNESSETH, that, in consideration of £——, this day advanced by the mortgagee to the mortgagor (the receipt whereof the mortgagor doth hereby acknowledge), HE the mortgagor doth hereby covenant with the mortgagee to pay (*a*) to the mortgagee, on the —— day of —— next (*b*), the sum of £—— (*c*), with interest for the same in the meantime at the rate of £—— per cent. per annum (*d*). AND IF the said sum of £——, or any part thereof, shall remain unpaid after that day, to pay to the mortgagee, so long as the same sum or any part thereof shall remain unpaid, interest at the rate aforesaid for the sum so remaining unpaid, by equal half-yearly payments on the —— day of —— and the —— day of —— (*e*). AND THIS INDENTURE ALSO WITNESSETH, that,

Witnesseth.

Consideration.

Receipt.

Covenant for payment of mortgage money; and interest.

Witnesseth.

lender the powers conferred on mortgagees by the Conv. Act, 1881, App. IV., *infra*, sects. 19—24. For variations suitable to registered land, see that Precedent.

(*a*) In some former editions the above covenant was framed as a covenant by the mortgagor with the mortgagee that the former *would* pay, &c., instead of "to pay," &c. The form now adopted in this respect conduces to brevity, and seems unobjectionable when used in a simple covenant of this description; but when the covenant is for the doing of a number of successive or independent things, the old form should be adhered to, it being much more convenient to introduce each new part of the covenant with the words "And will" than with the words "And to": indeed, the use of the latter form frequently results in rendering the covenant unintelligible.

(*b*) Six calendar months from the date of the deed.

(*c*) The principal sum advanced.

(*d*) As to omitting the words "without any deduction" in covenants for payment and provisoes for redemption, see Davidson's Prec. Conv. vol. ii. pt. ii. 4th ed. p. 18, n. (*q*).

(*e*) As to the effect of a covenant for payment in mortgages and agreements for mortgages, see Davidson's Prec. Conv. vol. ii. pt. ii. 4th ed. pp. 17 and 26. In the absence of such a covenant, or of words amounting to an express agreement to pay, the mortgage or agreement, though under seal, would not render the debt

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AGREEMENT FOR MORTGAGE OF LEASEHOLDS.

for the consideration aforesaid, IT IS HEREBY AGREED, and the mortgagor doth hereby covenant with the mortgagee, that he the mortgagor, and all other necessary parties (if any), will at any time hereafter, while the said sum of £——, or any part thereof, shall remain unpaid, upon the request and to the satisfaction of the mortgagee, but at the cost of the mortgagor, effectually assign, demise, or otherwise assure unto the mortgagee, ALL THE HEREDITAMENTS comprised in and expressed to be demised by an indenture of lease, dated, &c., and made between [*parties*], either for the whole residue then to come of the term of —— years, created by the same indenture, or, if the mortgagee shall so require, for such residue, except the last day thereof (*a*) BY WAY of mortgage, for securing the

Covenant by mortgagor, to assure by way of mortgage to the mortgagee; leasehold parcels; for residue of term granted to mortgagor, or for such residue except the last day.

secured thereby more than a simple contract debt. See *Saunders* v. *Milsome*, L. R. 2 Eq. 573; *Isaacson* v. *Harwood*, L. R. 3 Ch. 225; *Jackson* v. *North Eastern Railway Co.*, 7 Ch. D. 573. The distinction, however, between specialty and simple contract debts is now of little importance, the priority of the former in the administration of estates having been abolished by 32 & 33 Vict. c. 46; and though they have still in other cases the advantage over the latter, that they can be recovered at any time within 20 years after cause of action accrued, or removal of disability, as the case may be, and also give the right to recover 20 years' arrears of interest (3 & 4 Will. 4, c. 42, s. 3; see also 19 & 20 Vict. c. 97), a mortgagor's covenant in a mortgage or a collateral bond by him for payment of the monies secured by the mortgage has been held to be deprived of this advantage by sect. 8 of the Real Property Limitation Act, 1874; see *Sutton* v. *Sutton*, 22 Ch. D. 511, and *Fearnside* v. *Flint*, *ib.* 579. The section does not, however, apply to a simple contract debt charged on land so as to extend the period of recovery to 12 years; *Barnes* v. *Glenton*, [1899] 1 Q. B. 885; nor does it apply to the bond or covenant of a surety; see *Re Powers*, 30 Ch. D. 291; and see *Re Frisby*, 43 Ch. D. 106; *Re England*, [1895] 2 Ch. 820; *Kirkland* v. *Peatfield*, [1903] 1 K. B. 756.

(*a*) Unless the lease be at a nominal rent, and without any onerous covenants, the actual mortgage would probably be made by way of underlease; see n. (*b*), p. 261, *infra*. But as the object of this agreement is to charge in equity the mortgagor's whole interest in the leasehold, it appears better to word the agreement to mortgage as in the text.

PRECEDENT XLVI.

AGREEMENT FOR MORTGAGE OF LEASEHOLDS.

payment to the mortgagee of the said sum of £——, or so much thereof as shall, for the time being, remain unpaid, with interest for the same respectively, after the rate aforesaid. AND THAT such mortgage shall contain all such clauses, covenants, and provisions usual in mortgages of similar property as the mortgagee shall require (*a*). AND THAT until the said mortgage shall be made and executed, the said leasehold premises shall be and remain a security to the mortgagee, and be charged with the payment to him of the said sum of £——, and interest as aforesaid (*b*). AND ALSO that, so long as the said sum of £——, or any part thereof, or any interest for the same, shall remain owing on the security of the said leasehold premises, HE the mortgagor will pay the rent reserved by and perform the covenants by the lessee, and conditions contained in the said indenture of lease, and henceforth to be performed and observed (*c*). [And for

Mortgage to contain usual clauses.

And that the premises shall be a security for the mortgage money.

For payment of the rent; and performance of the lessee's covenants.

Power of attorney to execute mortgage.

(*a*) See *Farmer* v. *Pitt*, [1902] 1 Ch. 954.

(*b*) A clause in the following form may be here added. It is adapted from *London & County Banking Co.* v. *Goddard*, [1897] 1 Ch. 642, where the trust created was held to be within s. 12 of the Trustee Act, 1893 (App. XVI., *infra*):—

" And further, that until such mortgage shall be executed the mortgagor will hold the said leasehold premises in trust for the mortgagee, in his character of mortgagee under these presents, with power for him to remove the mortgagor or any other person or persons from being a trustee or trustees in respect of this trust, and to appoint himself or any other person or persons to be a trustee or trustees in respect of the trust, and to effectuate every or any such appointment by means of a vesting declaration of the said trust premises, or of any part or parts thereof, or estate or interest therein accordingly."

Declaration of trust of the mortgaged property with ancillary powers.

(*c*) Where the mortgagor has only an agreement for a lease, though it is not necessary that notice of the charge should be given to the intended lessor, yet as a matter of precaution, such notice ought to be given, if possible; see *Union Bank of London* v. *Kent*, 39 Ch. D. 238.

PRECEDENT XLVI.

AGREEMENT FOR MORTGAGE OF LEASEHOLDS.

the consideration aforesaid the mortgagor doth hereby irrevocably appoint the mortgagee the attorney of the mortgagor in his name and on his behalf, and as his act and deed, to execute and perfect such mortgage as aforesaid, and to execute and do every or any other assurance and thing which may be proper for carrying into effect the agreement hereinbefore contained.] [*Interpretation clause, supra*, p. 240.] IN WITNESS, &c.

XLVII.

PRECEDENT XLVII.

MEMORANDUM OF EQUITABLE MORTGAGE.

MEMORANDUM *accompanying a deposit of* DEEDS *by way of equitable mortgage* (*a*).

BE IT REMEMBERED that on this —— day of ——, 19—, the title deeds [land certificate] specified in the schedule hereto, which relate[s] to certain lands containing —— or thereabouts, situate at —— in the county of ——, and belonging to A., of, &c., have [has] been deposited by him with B., of, &c., by way of equitable mortgage of the same premises for securing the repayment to the said B. of the sum of £—— this day advanced by him to the said A., with interest for the same from this day at the rate of £—— per cent. per annum payable half-yearly. IN WITNESS, &c.

SCHEDULE *of* DEEDS.

(*a*) A memorandum substantially in this form was held in *Meek* v. *Baylis*, 31 L. J. Ch. 448, not to require an *ad valorem* stamp as "an agreement accompanied with a deposit of title deeds," under the then Stamp Act (13 & 14 Vict. c. 97). But clearly such a memorandum constitutes an equitable mortgage within sect. 86 (2) of the Stamp Act, 1891 (54 & 55 Vict. c. 39). In the case of registered land, see p. 102, *supra*; and where the land, though not registered, is situate in a district in which registration is compulsory, see p. 239, *supra*, n. (*d*).

XLVIII.

Mortgage *in* Fee *to* One Mortgagee.

Precedent XLVIII.

IN FEE TO ONE

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*mortgagor*] (hereinafter called the mortgagor) (*a*), of the one part, and B., of, &c. [*mortgagee*] (hereinafter called the mortgagee), of the other part, WITNESSETH, that, in consideration of £—— this day paid to the mortgagor by the mortgagee (the receipt whereof the mortgagor doth hereby acknowledge), he the mortgagor, as BENEFICIAL OWNER (*b*), doth hereby grant unto the mortgagee, his heirs and assigns [*parcels*, pp. 134, 138, &c.], TO HOLD the premises UNTO and TO THE USE of the mortgagee, his heirs and assigns. PROVIDED ALWAYS, that if the mortgagor shall pay to the mortgagee, on the —— day of —— next (*c*), the sum of £—— [*the principal*], with interest for the same in the meantime at the rate of £—— per cent. per annum, then the mortgagee (*d*) will, at any time thereafter, upon the request and at the cost of the mortgagor, reconvey the said premises unto the mortgagor, his heirs and assigns, or as he or they shall direct. AND the mortgagor doth hereby covenant (*e*) with the mortgagee, that he the mortgagor, will pay to the mortgagee, on the said —— day of —— next, the said sum of £—— [*the prin-*

Parties.

Witnesseth.

Consideration.

Receipt.

Conveyance.

Habendum.

Proviso for redemption.

Covenant for repayment of mortgage-money, with interest at the end of six months:

(*a*) See p. 238, *supra*, n.

(*b*) As to the covenants implied in a mortgage by a person expressed to convey as beneficial owner, see the Conv. Act, 1881 (App. IV., *infra*), s. 7 (1) (C).

(*c*) Six months from the date of the mortgage.

(*d*) See Conv. Act, 1881, s. 30 (App. IV., *infra*), which seems to render reconveyance by the heirs of a mortgagee in fee impossible. In other respects the Act does not necessitate, or render proper, any alteration in the usual form of proviso for redemption.

(*e*) As to this covenant, see *supra*, p. 241, n. (*a*). The form there given may be adopted if preferred. It has become usual to combine the covenant for payment of interest after default, with that for payment of principal, and this appears to be the proper place for introducing such combined covenant in a formal mortgage.

PRECEDENT XLVIII.

IN FEE TO ONE.

cipal], with interest for the same in the meantime at the rate of £— per cent. per annum. AND IF the said sum of £—— [*the principal*], or any part thereof, shall remain unpaid after that day, will pay to the mortgagee so long as the same sum, or any part thereof, shall remain unpaid (whether the same shall be due under this covenant or under any judgment or otherwise) (*a*), interest at the rate aforesaid for the sum so remaining unpaid, by equal half-yearly payments on the —— day of —— and the —— day of —— (*b*). AND the mortgagor doth hereby covenant with the mortgagee, that during the continuance of this security no person or persons or corporation shall be registered as proprietor or proprietors under the Land Transfer Acts, 1875 and 1897, of the said premises or any part thereof, without the consent in writing of the mortgagee (*c*). PROVIDED ALWAYS, and it is hereby declared, that the mortgagee shall not [under any circumstances be liable except for such monies as he shall actually receive, or] be answerable for any involuntary losses which may happen in or about the execution of any of the powers and trusts [herein contained or otherwise] vested in him as mortgagee under these presents (*d*). AND IT IS HEREBY

—and for payment of interest after default.

Covenant against registration.

Mortgagee not to be liable for involuntary losses.

Modification

(*a*) Where the rate of interest reserved is higher than £4 per cent. it is desirable to add these words. See *Ex parte Fewings*, 25 Ch. D. 338; *Economic Life Assurance Society* v. *Usborne*, [1902] A. C. 147.

(*b*) A proviso for quiet enjoyment by the mortgagor until default was formerly inserted in mortgages; but it is of no real use unless the money is to remain for a term, and even then of no practical value, and is therefore generally omitted.

(*c*) This covenant is desirable in a mortgage of unregistered land, whether in a compulsory district or not, if it is capable of registration under the Acts referred to. Otherwise the mortgagee may find himself embarrassed in exercising his power of sale by the land being registered, and the land certificate out of his custody or control.

(*d*) It is thought that this clause should be inserted, even when no special powers are given by the deed. The statutory indemnity applies only to the power of sale.

DECLARED that the mortgagor shall not exercise over, or in relation to, the said premises or any part thereof, without the consent in writing of the mortgagee, any of the powers of leasing and ancillary powers contained in or given by sect. 18 of the Conveyancing and Law of Property Act, 1881 (*a*). [*Interpretation clause, supra*, p. 240.] IN WITNESS, &c.

PRECEDENT XLVIII.

IN FEE TO ONE.

of sect. 18 of the Conveyancing and Law of Property Act, 1881.

THE SCHEDULE above referred to.

(*a*) Sect. 18, sub-sect. 1, confers leasing powers on mortgagors in possession; and the second sub-section confers the same powers on mortgagees in possession. It is common, but by no means of course, to preclude the mortgagee and those deriving title under him from exercising these powers. Sect. 17 contains the restriction on consolidation, and the following clause is intended to preclude the operation of that section, but is to be used with discrimination:—

Declaration as to right to consolidate.

[AND FURTHER that notwithstanding sect. 17 of the same Act, the mortgagor shall not be entitled to redeem the present mortgage without at the same time redeeming every or any existing or future mortgage for the time being held by the mortgagee on other property now or at any time hereafter belonging to the mortgagor, or to redeem any other such mortgage without at the same time redeeming the present mortgage.]

The following is a form (intended to precede the Interpretation Clause) of an attornment clause, which, if the mortgagor is in possession, may be of some use in enabling the mortgagee to recover immediate possession, under Order III. r. 6. See *Mumford* v. *Collier*, 25 Q. B. D. 279; and *infra*, p. 330, n. (*b*).

Attornment clause.

"AND THE MORTGAGOR doth hereby attorn tenant from year to year to the mortgagee of the said hereditaments and premises at the yearly rent of £ —— [*one year's interest*], to be paid half-yearly on the —— day of —— and the —— day of ——, the first of such payments to be made on the —— day of —— next. PROVIDED ALWAYS that the mortgagee may at any time after the said ——

PRECEDENT XLVIII.

IN FEE TO ONE.

day of —— next enter upon the said hereditaments and premises, and determine the tenancy created by the said attornment."

It is considered (see p. 44, *supra*) that the statutory power of sale under the Conv. Act, 1881, App. IV., *infra*, may be safely relied upon, and that it is better to dispense with the insertion of any other power of sale, and the general practice is in conformity with this view. But it is thought that it may still be convenient to give in notes to this and the following Precedent the power of sale formerly in general use, with the omission of some clauses, which under the provisions of the Act may now be safely omitted, even where the power of sale is not left to be supplied by the Act. The power of sale thus given should, if inserted, be placed after the covenant for payment of interest.

Power of sale.

"AND IT IS HEREBY DECLARED, that the mortgagee may at any time or times after the said —— day of —— next (*a*), without any further consent on the part of the mortgagor, sell the said premises, or any of them or any part thereof, either together or in parcels, and either by public auction or private contract, AND may execute and do all such assurances and things for effectuating any such sale as he shall think fit (*b*); PROVIDED NEVERTHELESS, that the mortgagee shall not execute the power of sale hereinbefore contained, until he shall have given to the mortgagor, or left on some part of the said premises (*c*), a notice in writing to pay off the monies for the time being owing on the security of these presents, and default shall have been made in such payment for six calendar months after giving or leaving such notice, or until the whole or part of some half-yearly payment of interest shall have become in arrear for three calendar months (*d*); PROVIDED ALSO, that upon any sale

Power not to be exercised till certain events shall happen.

Purchasers

(*a*) The day named for payment of the principal sum.

(*b*) A clause was formerly here added to the effect that upon a sale by any person or persons not having the legal estate, the person or persons having such estate should join in carrying the sale into effect. But the clause is no longer needed, having regard to sect. 30 of the Conv. Act, 1881.

(*c*) Or if the property has no locality, "at his last known place of abode in England."

(*d*) This proviso is, in most cases, of little practical value, for a mortgagee is not disposed to sell the property, if he can get his money by demanding it. In *Cockburn* v. *Edwards*, 18 Ch. D. 449, and *Cradock* v. *Rogers*, W. N. 1885, p. 134, 53 L. J. Ch. 968, the omission on the part of a solicitor to insert in a mortgage to himself by his client the usual

purporting to be made in pursuance of the aforesaid power, no purchaser shall be bound to inquire whether either of the cases mentioned in the clause lastly hereinbefore contained has happened, or whether any money remains upon the security of these presents, or as to the propriety or regularity of such sale; and notwithstanding any impropriety or irregularity whatsoever in any such sale, the same shall, as regards the purchaser or purchasers, be deemed to be within the aforesaid power, and be valid accordingly (*a*). AND IT IS HEREBY DECLARED, that the receipt of the

not to be bound to see that such events have happened.

Mortgagee's

clause qualifying (as in the text) the right to exercise the power of sale, was held to be a breach of duty. See also *Miller* v. *Cook*, L. R. 10 Eq. 641. But this doctrine was held not to apply to an arrangement not being an ordinary mortgage transaction, but intended to give the client time for payment of a debt presently payable (*Pooley's Trustees* v. *Whetham*, 33 Ch. D. 111). If the clause be left out, the words in the next clause referring to it should be omitted. As to what is a sufficient notice, see *Metters* v. *Brown*, 33 L. J. Ch. 97; *Massey* v. *Sladen*, L. R. 4 Ex. 13; also *Moore* v. *Shelley*, 8 App. Cas. 285. If the proviso is retained, and there be any special covenant or covenants by the mortgagor, *e.g.*, to insure, the following or some similar addition should be made to it:—

"or until default shall be made in performance or observance of some or one of the covenants hereinbefore contained in relation to the insurance and repair of the said messuage and buildings and otherwise."

And in the next clause the word "any" should be substituted for "either." As to the position of a solicitor-mortgagee, as regards costs, see now the Mortgagees' Legal Costs Act, 1895 (58 & 59 Vict. c. 25).

(*a*) That this proviso will not protect a purchaser who, at the time of his purchase, is aware that the principal and interest have been tendered and that the estate is a sufficient security for the costs, see *Jenkins* v. *Jones*, 2 Giff. 99; *Robertson* v. *Norris*, 1 Giff. 421; *Selwyn* v. *Garfit*, 38 Ch. D. 273; *Re Thompson & Holt*, 44 Ch. D. 492. But see *Dicker* v. *Angerstein*, 3 Ch. D. 600. As to what is a *bonâ fide* exercise of such a power of sale, see *Thurlow* v. *Mackeson*, L. R. 4 Q. B. 97; *Warner* v. *Jacob*, 20 Ch. D. 220; *Martinson* v. *Clowes*, 21 Ch. D. 857; *Nash* v. *Eade*, 25 Sol. J. 95; *Colson* v. *Williams*, 58 L. J. N. S. Ch. 538; *Farrar* v. *Farrars, Limited*, 40 Ch. D. 395; *Kennedy* v. *De Trafford*, [1896] 1 Ch. 762; [1897] A. C. 180; *Nutt* v. *Easton*, [1899] 1 Ch. 873; *Hodson* v. *Deans*, [1903] 2 Ch. 647. In *Bailey* v. *Barnes*, [1894] 1 Ch. 25, the Court declined to impute to a purchaser from the transferee of a mortgage constructive notice of the impropriety of the sale, merely on the ground that there were suspicious circumstances.

PRECEDENT XLVIII.

IN FEE TO ONE.

receipt to be a discharge to purchasers.

Trusts of purchase-money.

Power to be exercised by any person entitled to receive mortgage-money.

Mortgagee's indemnity clause.

mortgagee for the purchase-monies of the premises sold, or any part thereof, shall effectually discharge the purchaser or purchasers therefrom, and from being concerned to see to the application thereof: AND that the mortgagee shall, out of the monies arising from any sale in pursuance of the aforesaid power, in the first place pay the expenses incurred on such sale or otherwise in relation to the premises; and in the next place apply such monies in or towards satisfaction of the monies for the time being owing on the security of these presents; and then pay the surplus (if any) of the monies arising from such sale to the said mortgagor, his heirs, or assigns (*a*); AND that the aforesaid power of sale and other powers may be exercised by any person or persons for the time being entitled to receive and give a discharge for the monies then owing on the security of these presents. PROVIDED ALWAYS, that the mortgagee shall not be answerable for any involuntary losses which may happen in the execution of the aforesaid power and trusts, or any of them (*b*)."

(*a*) If the mortgage be of leasehold or personal property, say "his executors, administrators, or assigns"; and if it be of leaseholds or personal property and real estate, say, "his executors, administrators, or assigns, as personal estate." See note (*b*), on p. 272, *infra*. See also as to the equity of redemption where real and personal estate are mortgaged together, *Hall* v. *Heward*, 32 Ch. D. 430.

(*b*) It was usual to provide, that the right of foreclosure should not be affected by the power of sale; but the precaution, though countenanced by sub-sect. 5 of sect. 21 of the Conv. Act, 1881, is not necessary, for a mortgagee, under a properly drawn mortgage, loses none of his rights as mortgagee by arming himself, in addition, with a power of sale. In the case of bankruptcy, it has been expressly decided, that a mortgagee may waive his power of sale, and have the estate sold under an order in bankruptcy in the usual way (*Ex parte Hodgson*, 1 Glyn. & Jam. 12; *Ex parte Davis*, 1 Mont. & Ayr. 89; *S. C.*, 3 Dea. & Chit. 504). Such is now a matter of ordinary practice in all cases. The notion of the power of sale affecting the right of foreclosure probably arose from the circumstance that there is no right to foreclose under a security made by a trust for sale. See as to the nature and effect of such a security, *Harding* v. *Tingey*, 34 L. J. Ch. 13; *Locking* v. *Parker*, L. R. 8 Ch. 30; *In re Alison*, *Johnson* v. *Mounsey*, 11 Ch. D. 284; *Rochefoucauld* v. *Bousted*, [1897] 1 Ch. 208.

XLIX.

Mortgage *in* Fee *to* several Mortgagees.

Precedent XLIX.

In fee to several.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*mortgagor*] (hereinafter called the mortgagor) (*a*), of the one part, and B., of, &c., C., of, &c., and D., of, &c. [*mortgagees*] (hereinafter called the mortgagees), of the other part, WITNESSETH, that, in consideration of £—— this day paid to the mortgagor by the mortgagees, out of monies belonging to them on a joint account (*b*) (the receipt whereof the mortgagor doth hereby acknowledge), he the mortgagor AS BENEFICIAL OWNER doth hereby grant unto the mortgagees, their heirs and assigns [*parcels*, pp. 134, 138, &c.], TO HOLD the premises UNTO and TO THE USE of the mortgagees, their heirs and assigns: PROVIDED ALWAYS, that if the mortgagor shall pay to the mortgagees, on the —— day of —— next (*c*), the sum of £—— [*the principal*], with interest for the same in the meantime at the rate of £— per cent. per annum, then they, the mortgagees, will, at any time thereafter, upon the request and at the cost of the mortgagor, reconvey the said premises unto the mortgagor, his heirs and assigns, or as he or they shall direct. AND THE MORTGAGOR doth hereby covenant with the mortgagees, that he, the mortgagor, will pay to the mortgagees, on the said —— day of —— next, the said sum of £—— [*the principal*], with interest for the same in the meantime at the rate of £ – per cent. per annum, AND IF the said sum of £ – – [*the principal*], or any part thereof, shall remain unpaid after that day, will,

Parties.

Witnesseth.

Consideration.

Receipt.

Conveyance.

Habendum.

Proviso for redemption.

Covenant for repayment of mortgage-money, with interest at the end of six months;

—and for payment of interest after default.

(*a*) See p. 238, *supra*, n.

(*b*) See the Conv. Act, 1881 (App. IV., *infra*), s. 61. But the words are not actually necessary, as the mortgage is made to the mortgagees jointly, which would in itself suffice to carry the debt to the survivors.

(*c*) Six calendar months from the date of the mortgage.

PRECEDENT XLIX.

IN FEE TO SEVERAL.

so long as the same sum or any part thereof shall remain unpaid (whether the same shall be due under this covenant or under any judgment or otherwise (*a*), pay to the mortgagees, interest at the rate aforesaid, for the sum so remaining unpaid, by equal half-yearly payments, on the —— day of —— and the —— day of ——: [*Covenant against registration*, p. 246, *supra*.] PROVIDED ALWAYS and it is hereby declared, that the mortgagees, or any [either] of them, shall not [under any circumstances be liable except for such monies as they shall actually receive, or] be answerable for any involuntary losses which may happen in or about the execution of any of the powers and trusts [herein contained or otherwise] vested in them or any [either] of them as mortgagees or mortgagee under these presents. AND IT IS HEREBY DECLARED, that the mortgagor shall not exercise over or in relation to the said premises, or any part thereof, without the consent in writing of the mortgagees, any of the powers of leasing and ancillary powers contained in or given by sect. 18 of the Conveyancing and Law of Property Act, 1881. PROVIDED ALWAYS, that unless such an interpretation is

Mortgagees not to be liable for involuntary losses.

Modification of sect. 18 of the Conveyancing and Law of Property Act, 1881.

Interpretation clause (*b*).

(*a*) See n. (*a*) at p. 246, *supra*.

(*b*) See *supra*, p. 240, n. (*a*). The following is a modification adapted to this Precedent, of the exclusion clause referred to, p. 247 :—

Declaration as to right of consolidation.

[" AND FURTHER, that notwithstanding sect. 17 of the same Act the mortgagor shall not be entitled to redeem the present mortgage without at the same time redeeming every or any existing or future mortgage for the time being held by the mortgagees, on other property now or at any time hereafter belonging to the mortgagor, or to redeem any other such mortgage without at the same time redeeming the present mortgage."]

Power of sale. A power of sale applicable to a mortgage to several would take the following form :—

" AND IT IS HEREBY DECLARED, that the mortgagees may, at any

PRECEDENT XLIX.

IN FEE TO SEVERAL.

inconsistent with the context, the expression "the mortgagor" hereinbefore used shall include his heirs, exe-

time or times after the said —— day of —— next (*a*), without any further consent on the part of the mortgagor, sell the said premises, or any of them or any part thereof, either together or in parcels, and either by public auction or private contract, AND may execute and do all such assurances and things for effectuating any such sale as they shall think fit: PROVIDED NEVERTHELESS that the mortgagees shall not execute the power of sale hereinbefore contained, until they shall have given to the mortgagor, or left on some part of the said premises (*b*), a notice in writing to pay off the monies for the time being owing on the security of these presents, and default shall have been made in such payment for six calendar months after giving or leaving such notice, or until the whole or part of some half-yearly payment of interest shall have become in arrear for three calendar months (*c*): PROVIDED ALSO, that upon any sale purporting to be made in pursuance of the aforesaid power, no purchaser shall be bound to inquire whether either (*d*) of the cases mentioned in the clause lastly hereinbefore contained has happened, nor whether any money remains upon the security of these presents, nor as to the propriety or regularity of such sale; and notwithstanding any impropriety or irregularity whatsoever in any such sale the same shall, as regards a purchaser, be deemed to be within the aforesaid power, and be valid accordingly. AND IT IS HEREBY DECLARED, that the receipt of the mortgagees for the purchase-monies of the premises sold, or any part thereof, shall effectually discharge the purchaser or purchasers therefrom, and from being concerned to see to the application thereof; AND that the mortgagees shall, out of the monies arising out of any sale in pursuance of the aforesaid power, in the first place, thereout pay the expenses incurred on such sale or otherwise in relation to the premises; And, in the next place, apply such monies in or towards satisfaction of the monies for the time being owing on the security of these presents, and then pay the surplus (if any) of the monies

Power not to be exercised till certain events shall happen.

Purchaser not to be bound to see that such events have happened.

Mortgagees' receipts to be discharges to purchasers.

Trusts of purchase-money.

(*a*) The day for payment of the principal sum.

(*b*) Or "at his last known place of abode in England."

(*c*) Add, if required, "or until default shall have been made, in performance or observance of some or one of the covenants hereinbefore contained in relation to the insurance and repair of the said premises and otherwise." And see *supra*, p. 248, n. (*d*).

(*d*) Substitute "any" if the clause in the last preceding note is inserted.

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IN FEE TO SEVERAL.

cutors, administrators, and assigns; and the expression "the mortgagees" hereinbefore used shall include not only the executors, administrators, and assigns, but also the [survivors and] survivor of them and the executors or administrators of such survivor, their or his assigns. IN WITNESS, &c.

THE SCHEDULE above referred to.

L.

PRECEDENT L.

STATUTORY.

DEED *of* STATUTORY MORTGAGE (*a*).

THIS INDENTURE, made by way of statutory mortgage, the —— day of ——, 19—, between A., of, &c., of the one part, and M., of, &c., of the other part, WITNESSETH, that, in consideration of the sum of £—— now paid to A. by M., of which sum A. hereby acknowledges the receipt, A., AS MORTGAGOR and AS BENEFICIAL OWNER, hereby conveys to M. ALL THAT, &c. (*b*). TO HOLD to and to the use of M. in fee simple (*c*), for securing payment to arise from such sale unto the mortgagor, his heirs or assigns (*d*); AND that the aforesaid power of sale and other powers may be exercised by any person or persons for the time being entitled to receive and give a discharge for the monies then owing on the security of these presents. PROVIDED ALWAYS, that the mortgagees, or any of them, shall not be answerable for any involuntary losses which may happen in the execution of the aforesaid power and trusts, or any of them."

Power to be exercised by any person entitled to receive mortgage-money.

Mortgagees' indemnity clause.

(*a*) See the Conv. Act, 1881 (App. IV., *infra*), sects. 26—29.

(*b*) For freehold parcels see pp. 134, 138, *supra*, and for leasehold parcels, p. 262, *infra*.

(*c*) If leasehold, omit the words, "and to the use of" and insert instead of "in fee simple," the words "his executors, administrators, and assigns for the residue of the said term of —— years, except the last day thereof." And compare Precedents LIV. and LV., *infra*, and the notes to these Precedents respectively.

(*d*) Or "his executors, administrators, or assigns," or "his

on the —— day of ——, 19—, of the principal sum of £—— as the mortgage-money with interest thereon at the rate of £— per cent. per annum. IN WITNESS, &c.

PRECEDENT L. STATUTORY.

LI.

MORTGAGE *in* FEE *for an* AGGREGATE SUM *consisting of* PRIOR MORTGAGE DEBTS *transferred to Mortgagees and* FURTHER ADVANCE.

PRECEDENT LI. IN FEE FOR AGGREGATE SUM.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*mortgagor*] (hereinafter called the mortgagor), of the one part, and B., of, &c., C., of, &c., and D., of, &c. [*mortgagees*] (hereinafter called the mortgagees), of the other part: WHEREAS the mortgagor is entitled to the hereditaments described in the first schedule hereto for an estate of inheritance in fee simple in possession, subject only to the several principal sums secured by way of mortgage and further charge mentioned in the second schedule hereto, and to the interest thereon, and to the securities for the same respectively, and to the several annual sums and incumbrances mentioned in the third schedule hereto; AND WHEREAS the said several principal sums mentioned in the said second schedule are all vested in and owing to the mortgagees on a joint account and all interest for the same has been paid down to the date of these presents, and the legal estate in fee simple in the said hereditaments is vested in the mortgagees, as such mortgagees as aforesaid, subject to the said several annual sums and incumbrances mentioned in the said third schedule; AND WHEREAS the mortgagees have agreed out of monies belonging to them on a joint account to lend to the mortgagor the further sum of £——, upon having the repayment of the same and of the said several principal sums mentioned in the

Parties.

Recitals:
—of title of mortgagor subject to incumbrances;
—of prior charges being vested in mortgagees;
—of agreement for further advance.

executors, administrators, or assigns as personal estate," as the case may require. See note (*b*) on p. 272, *infra*.

PRECEDENT LI.

IN FEE FOR AGGREGATE SUM.

said second schedule, and making altogether the aggregate sum of £——, with interest for the same after the rate hereinafter mentioned, secured and further secured respectively by these presents in manner hereinafter appearing:

Witnesseth.

NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the said several sums mentioned in the said second schedule hereto being owing to the mortgagees as aforesaid, and of the sum of £—— to the mortgagor now paid by the mortgagees (the receipt whereof the mortgagor doth hereby acknowledge),

Grant by mortgagor.

He the mortgagor AS BENEFICIAL OWNER doth hereby grant and confirm unto the mortgagees, their heirs and assigns,

Parcels by reference to schedule and ownership of mortgagor.

ALL AND SINGULAR the manors or lordships, rectory, markets, market-houses, tolls, dues, payments, ferry, messuages, lands, tenements, rights, royalties, franchises, liberties, privileges, and hereditaments, the particulars whereof are specified in the said first schedule hereto, And all and singular other the lands, tenements, and hereditaments (if any) of him the mortgagor, situate, arising (*a*), or being in any of the parishes or places mentioned in the same schedule, or any parish or place near or adjacent

Habendum.

thereto, TO HOLD the premises UNTO and TO THE USE

Subject to prior charges.

of the mortgagees, their heirs and assigns, SUBJECT to the several principal sums mentioned in the said second schedule hereto, and the interest henceforth to grow due for the same, and the securities for the same respectively, and to the said annual sums and incumbrances mentioned in the said third schedule hereto, and the remedies and

Proviso for redemption.

securities for the same respectively. PROVIDED ALWAYS that, if the mortgagor shall pay to the mortgagees, on the —— day of —— next, the sum of £—— (being the aggregate of the said sums mentioned in the said second schedule hereto, and of the said sum of £—— so advanced as aforesaid), with interest for the same in the meantime

(*a*) As to the importance of this word when incorporeal hereditaments are meant to be included, see *Crompton* v. *Jarratt*, 30 Ch. D. 298; *Re Hodgson*, [1898] 2 Ch. 545.

PRECEDENT LI.

IN FEE FOR AGGREGATE SUM.

at the rate of £— per cent. per annum, then the mortgagees shall, at any time thereafter, upon the request and at the cost of the mortgagor, reconvey the said premises unto the mortgagor, his heirs and assigns, or as he or they shall direct, freed and discharged from the said several principal sums mentioned in the said second schedule and all interest for the same, and the entire principal money and interest intended to be hereby secured, but subject to such of the said annual sums and incumbrances mentioned in the said third schedule (if any) as shall for the time being be subsisting or capable of taking effect, and the remedies and securities for the same respectively. [*Covenant for payment of aggregate debt with interest, and of interest after default, supra*, p. 251 (*a*).] AND IT IS HEREBY declared, that any sale under the power of sale herein by statute implied may, if made discharged from all or any of the said annual sums and incumbrances mentioned in the said third schedule or any part or parts thereof respectively, be so made either upon the terms of the same or any of them, or any part or parts thereof

Any sale made discharged from subsisting prior charges may be upon any terms of indemnity against them (*b*).

(*a*) If desired the following covenant, a breach of which would bring into operation the statutory power of sale, may be added at this point:—

"And further that he the mortgagor will pay or discharge the said principal sums mentioned in the said second schedule hereto and the interest for the same, and the said annual sums and incumbrances mentioned in the said third schedule hereto as and when payment thereof respectively shall be lawfully demanded, and keep the mortgagees indemnified against the payment thereof or any part thereof respectively and against all proceedings, costs, damages, claims, and demands and liability for non-payment thereof respectively."

(*b*) This clause would seldom be required if the incumbrances consisted of gross sums only. See the Conv. Act, 1881 (App. IV., *infra*), s. 21.

PRECEDENT LI.

IN FEE FOR AGGREGATE SUM.

respectively being purchased or discharged out of the purchase-monies of the hereditaments sold, or of any Government or other annuity or annuities being purchased out of such purchase-monies by way of substitution for, or indemnity against, the said annual sums or any of them, or any part or parts thereof respectively, or upon any other terms of indemnity against the said annual sums and incumbrances, or any of them, or any part or parts thereof respectively, and generally upon any terms respecting the same, which the mortgagees shall think fit; and with power for them to execute and do all assurances and things they shall think fit for effectuating such terms and purposes or any of them; [*Covenant against registration, supra*, p. 246. *Mortgagees not to be liable for involuntary losses, supra*, p. 252]: PROVIDED ALWAYS, and it is hereby declared, that these presents shall not, nor shall anything herein contained, in anywise preclude the mortgagees from exercising any power of sale, or other power or right, which, under or by virtue of any of the indentures or securities mentioned or referred to in the said second schedule, might have been exercised if these presents had not been made and executed (*a*). [*Clause modifying sect.* 18 *of the Conv. Act*, 1881, *ut supra*, p. 252 (*b*); *Interpretation Clause*, p. 252.] IN WITNESS, &c.

Powers of sale and other powers under former securities, not to be prejudiced.

Schedule.

THE FIRST SCHEDULE above referred to.

THE SECOND SCHEDULE above referred to.

THE THIRD SCHEDULE above referred to.

(*a*) The priority of, and powers given by, the transferred mortgages, should, as a rule, be preserved.

(*b*) This clause, or else an express provision that the powers may be exercised with or without consent, should always be inserted in a mortgage of this description. No doubt the effect of such a deed as this would be to discharge a surety for any of the debts assigned, and to release any securities given by the surety. See *Bolton* v. *Buckenham*, [1891] 1 Q. B. 278; *Bolton* v. *Salmon*, [1891] 2 Ch. 48.

LII.

Mortgage *of* Copyholds.

Precedent. LII. — of copyholds.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*mortgagor*] (hereinafter called the mortgagor), of the one part, and B., of, &c. [*mortgagee*] (hereinafter called the mortgagee), of the other part, WITNESSETH, that in consideration of £—— this day paid to the mortgagor by the mortgagee (the receipt whereof the mortgagor doth hereby acknowledge), he the mortgagor AS BENEFICIAL OWNER doth hereby covenant with the mortgagee [*covenant to surrender copyholds, supra*, p. 183], TO THE USE of the mortgagee, his heirs and assigns, according to the custom of the said manor, by and under the accustomed rents, fines, suits, and services, and SUBJECT to a condition for making void the said surrender, if the mortgagor shall pay unto the mortgagee the sum of £—— [*the principal*] with interest for the same in the meantime at the rate of £— per cent. per annum on the —— day of —— next (*a*). AND further, that the said premises hereinbefore covenanted to be surrendered shall henceforth stand charged with the payment of the said sum of £—— and inte-

Parties.

Witnesseth.

Consideration.

Receipt.

Covenant to surrender copyholds, to the use of the mortgagee;

subject to a condition for making void the surrender.

(*a*) Six months from date. See *supra*, p. 183, n. (*d*). It has now been decided that a covenant to surrender copyholds by way of mortgage will entitle the mortgagee to a vesting order in case the mortgagor refuses to surrender accordingly. *Re Crowe's Mortgage*, L. R. 13 Eq. 26. It is considered that, regard being had to this decision and to the decisions in *Re Cuming*, L. R. 5 Ch. 72, and *Re Pagani*, [1892] 1 Ch. 236 (see also *Re Colling*, 32 Ch. D. 333; *Re D. Jones & Co.'s Mortgage Trusts*, W. N. 1888, p. 217), the declaration of trust mentioned in the above note may safely be dispensed with in mortgages and settlements, as well as in conveyances, and such declaration has accordingly been omitted. A clause as on pp. 246, 247, with respect to the mortgagor's leasing powers, may be added if desired. A demise of copyholds (it should be observed) may be made with the licence of the lord.

PRECEDENT LII. — OF COPYHOLDS.

rest (*a*). [*Covenant for payment of principal and interest, and of interest after default, supra*, pp. 245, 246. *Interpretation Clause*, p. 240.] IN WITNESS, &c.

THE SCHEDULE above referred to.

LIII.

PRECEDENT LIII. — CONDITIONAL SURRENDER.

CONDITIONAL SURRENDER *pursuant to the Covenant in the last* PRECEDENT (*b*).

MANOR OF —— } BE IT REMEMBERED, that
in the county of ——. } on the —— day of ——, 19—, A., of, &c. [*mortgagor*], a customary tenant of the said manor, came before ——, gentleman, deputy steward of the said manor, and in consideration of £—— to him the said A. this day paid by B., of, &c. [*mortgagee*], and in pursuance of a covenant contained in an indenture dated the —— day of ——, and expressed to be made between the said A. of the one part, and the said B. of the other part, did out of Court SURRENDER by the rod into the hands of the lord of the said manor, by the hands and acceptance of the said steward, ALL THOSE [*parcels as in the mortgage deed*], Together with all buildings, fixtures, rights, easements, advantages, and appurtenances whatsoever to the said hereditaments appertaining or with the same held or enjoyed or reputed as part thereof or appurtenant thereto, TO THE USE OF the said B., his heirs and assigns, for ever, TO BE HOLDEN at the will of the lord, and by and under the rents, fines,

(*a*) It has been suggested that a simple covenant to surrender by way of mortgage may not create a mortgage or charge by deed so as to render the statutory power of sale exerciseable.

(*b*) The legal assurances of copyholds are usually prepared by the steward of the manor.

suits, and services therefor due, and of right accustomed. SUBJECT to this condition, that if the said A., his heirs, executors, administrators, or assigns, shall pay unto the said B., his executors, administrators, or assigns, the sum of £—— [*the principal*], with interest for the same in the meantime, at the rate of £— per cent. per annum, on the —— day of —— next (*a*), then this surrender is to be void.

PRECEDENT LIII. CONDITIONAL SURRENDER.

THE SCHEDULE referred to in the above-written SURRENDER.

LIV.

MORTGAGE *of* LEASEHOLDS (*b*), *with a* COVENANT *to* INSURE.

PRECEDENT LIV. OF LEASEHOLDS.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*mortgagor*] (hereinafter called the mortgagor), of the one Parties.

(*a*) The day of payment named in the mortgage deed.

(*b*) A mortgage of leaseholds is generally made by demise, to avoid subjecting the mortgagee to the rents and covenants, if they are burdensome. See Davidson's Prec. Conv. 4th ed. vol. ii. pt. ii. p. 117 *et seq.* In delivering the judgment of the Court in *Re Finley*, 21 Q. B. D. 475, Lord Justice Lindley appears to have suggested that the decision in that case might affect the practice of taking mortgages of leaseholds by sub-demise. It was assumed in that case that the term (though a trust estate) had vested in the trustee in bankruptcy of the mortgagor, and that the disclaimer by the trustee was effectual: see *Re Maughan*, 14 Q. B. D. 956; *Re Baker*, [1901] 2 K. B. 628. But it does not follow that a mortgage of a term ought to be taken by assignment. A mortgagee by demise, under a deed containing the usual trust of the nominal reversion, can at any time procure the term to be vested in himself or in a trustee for himself. He has the power, therefore, of preventing a disclaimer of the term. If, for that purpose, he should require and accept an assignment, he may be in the same position as if the mortgage had originally been made by assignment, but there seems to be no reason why he should allow himself to be

PRECEDENT LIV.

OF LEASEHOLDS.

part, and B., of, &c. [*mortgagee*] (hereinafter called the mortgagee), of the other part. WHEREAS, &c. [*recite the lease, and its having become vested in the mortgagor, ut supra*, pp. 194, 195]. AND WHEREAS the mortgagee has agreed to lend to the mortgagor the sum of £——, upon having the repayment thereof, with interest, as hereinafter mentioned, secured in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of £—— to the mortgagor this day paid by the mortgagee (the receipt whereof the mortgagor doth hereby acknowledge), he the mortgagor, as BENEFICIAL OWNER (*a*) doth hereby demise unto the mortgagee, ALL THOSE the said —— hereditaments and premises by the said indenture of the —— day of —— expressed to be demised (*b*), TO HOLD the premises unto the mortgagee, for the residue of the said term of —— years, except the last day thereof: PROVIDED ALWAYS, that if the mortgagor shall pay to the mortgagee, on the —— day of —— next, the sum of £—— [*the principal*], with interest for the same in the meantime at the rate of £— per cent. per annum, then the mortgagee will at any time thereafter, upon the request and at the cost of the mortgagor, surrender the said premises unto the mortgagor, his executors, administrators, and assigns. AND IT IS HEREBY AGREED that the mortgagor shall henceforth

Recital of lease;

—of agreement for mortgage.

Witnesseth.

Demise.

Parcels.

Habendum.

Proviso for redemption.

Trust of last day of term.

placed in that position unless or until he is obliged to do so. It would appear, moreover, that after a disclaimer the Court will in ordinary circumstances exercise, upon his application, its discretion under sect. 13 of the Bankruptcy Act, 1890, by making an order vesting the property in him, subject only to the same liabilities and obligations as if the lease had been assigned to him at the date of the bankruptcy. *Re Carter & Ellis*, [1905] 1 K. B. 735.

(*a*) See as to the covenants implied by virtue of these words the Conv. Act, 1881 (App. IV., *infra*), s. 7 (1), (C) and (D).

(*b*) See *supra*, p. 196, n. (*a*), and the Conv. Act, 1881, s. 6. The Estate Clause (as to which see the same Act, sect. 63) was never inserted in a demise, as a demise purports to pass only part of the lessor's interest.

stand possessed of the said last day of the said term of —— years in the said premises, in trust for the mortgagee, and to be disposed of as he shall direct, but subject to the same equity of redemption as may for the time being be subsisting in the said premises by virtue of the proviso lastly hereinbefore contained (*a*) [and with power for the mortgagee to remove, *ut supra*, p. 243, n.]. AND the mortgagor doth hereby irrevocably (*b*) appoint the mortgagee to be the attorney of the mortgagor in his name and on his behalf and as his act and deed to sign, seal, deliver and otherwise perfect every or any deed of assignment of the said term of —— years which may be desired by the mortgagee in order to vest in him, or in any person or persons in trust for him subject as aforesaid, or in any purchaser of the said premises or any part thereof, the whole residue of the same term [*Covenant for payment of principal and interest, and of interest after default, supra*, pp. 245, 246]. AND THE MORTGAGOR doth hereby covenant with the mortgagee, that he the mortgagor, will, so long as any money shall remain on the security of these presents, keep all the said messuages and buildings

Appointment of attorney to assign nominal reversion.

Covenant to keep the premises in repair, and insured against fire;

(*a*) This declaration of trust is inserted in lieu of the similar declaration of trust in favour of a purchaser after sale, which in some former editions formed part of the power of sale, and which is believed to have become obsolete. And see *supra*, p. 261, n. (*b*).

The declaration of trust for a purchaser after sale, formerly generally inserted in mortgages of leaseholds by demise, was first adopted, in preference to an absolute declaration of trust for the mortgagee, because the decisions in *Lucas* v. *Comerford*, 3 Brown, C. C. 166; 1 Ves. Jun. 235; and 8 Simon, 499; and in *Flight* v. *Bentley*, 7 Simon, 149, had suggested that such an absolute trust might render the mortgagee liable to the lessor in respect of the rent and covenants in the lease. But it is now clearly settled (see *Moores* v. *Choat*, 8 Simon, 508; *Cox* v. *Bishop*, 8 De G. M. & G. 815; and *Ramage* v. *Womack*, [1900] 1 Q. B. 116), that no such liability attaches to a merely equitable ownership of leaseholds. See, also, *Re Gee*, 24 Q. B. D. 65.

(*b*) See the Conv. Act, 1882 (App. V., *infra*), s. 8.

PRECEDENT LIV.

OF LEASEHOLDS.

and all other buildings (if any) for the time being comprised in or subject to such security [in good and substantial repair, and] insured against loss or damage by fire in some office approved of in writing by the mortgagee in the sum of £—— at the least [*or* in the full value thereof], and will pay all premiums and sums of money necessary for such purpose on the first day on which the same respectively ought to be paid, and will, on demand, produce to the mortgagee the policy or policies of such insurance, and the receipt for every such payment: AND will apply all monies received by virtue of any such policy in making good the loss or damage: AND ALSO, that if default shall be made in keeping the said premises so [repaired or] insured, it shall be lawful for the mortgagee to [enter and put into and keep in good and substantial repair the said premises or (as the case may require) to] insure, and keep insured, the same in any sum not exceeding £—— [*or* in any sum which the mortgagee may think reasonable], and that the mortgagor will, on demand, repay to the mortgagee all monies expended for any such purpose by him, with interest thereon at the rate aforesaid, from the time of the same respectively having been expended, and that, until such repayment, the same shall be a charge upon the said premises hereinbefore demised (*a*). [*Covenant against registration, if appropriate, supra*, p. 246; *Mortgagee's indemnity clause,*

—that, on default by mortgagor, mortgagee may repair and insure.

(*a*) See *Brooke* v. *Stone*, 33 L. J. Ch. 251, and *Bellamy* v. *Brickenden*, 2 Jo. & H. 137, as to the latter part of this covenant. The Conv. Act, 1881 (App. IV., *infra*), s. 19 (see also sect. 23), supplies a power for the mortgagee to insure, and charges the premiums on the mortgaged property, which renders the covenant by the mortgagor to insure of little importance, and as a rule it may be omitted with safety. The statutory power to insure is implied in all mortgages unless negatived expressly or by implication. If repairs are included in the covenant an addition should be made to the stamp for the purpose of covering the amount of any possible expenses of repairs. Clauses as to leasing and consolidation may be added if desired, see n. (*a*), p. 247, *supra*.

supra, p. 246, *and clauses if desired as to leasing, ut supra*, pp. 246, 247. *Interpretation clause*, p. 240.] IN WITNESS, &c.

PRECEDENT LIV. — OF LEASEHOLDS.

LV.

MORTGAGE *of* LEASEHOLDS, *the* LEASE *not being recited.* PROVISIONS *for* REDUCTION *of* RATE *of* INTEREST *on punctual payment and for* CONTINUANCE *of* LOAN.

PRECEDENT LV. — OF LEASEHOLDS.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*mortgagor*] (hereinafter called the mortgagor), of the one part, and B., of, &c. [*mortgagee*] (hereinafter called the mortgagee), of the other part, WITNESSETH, that, in consideration of £——, this day paid to the mortgagor by the mortgagee (the receipt whereof the mortgagor doth hereby acknowledge) the mortgagor AS BENEFICIAL OWNER doth hereby demise unto the mortgagee, ALL that messuage, &c. [*parcels as in the lease*], all which said messuage and other hereditaments were by an indenture of lease dated the —— day of ——, and made between [*parties*] demised to the mortgagor, for the term of —— years from the —— day of ——, at the yearly rent of £——, and subject to covenants by the lessee therein contained, TO HOLD the said premises unto the mortgagee for the residue of the said term of —— years, except the last day thereof: PROVIDED ALWAYS, &c. [*proviso for redemption, supra*, p. 262; *declaration of trust of last day of term, and power of attorney, supra*, pp. 262, 263 (*a*); *covenant for payment of principal and interest, and of interest after default, supra*, pp. 245, 246]. PROVIDED ALWAYS, that if the mortgagor shall regularly and continuously on, or within thirty days next after, every —— day of —— and —— day of ——, so long as the said sum of £—— [*the*

Parties. Witnesseth. Consideration. Demise. Parcels. Reference to lease. Habendum. Proviso for reduction of interest.

(*a*) See p. 263, *supra*, n. (*a*), as to this declaration of trust.

PRECEDENT LV.

OF LEASEHOLDS.

principal], or any part thereof, shall remain unpaid, pay to the mortgagee interest for the principal sum so remaining unpaid at the rate of £— per cent. per annum [*the reduced rate*], [AND ALSO shall perform and observe all the covenants on the part of the mortgagor respectively herein by statute implied and hereinafter contained (*a*)], the mortgagee shall accept interest for the same principal sum, at the rate last aforesaid, so long as and for every half-year for which such interest shall continue to be so regularly paid to him within the time aforesaid. PROVIDED ALSO, that, if the mortgagor shall regularly and continuously on, or within thirty days next after, every —— day of —— and —— day of ——, until the —— day of — , 19 , pay to the mortgagee, interest for the said sum of £—— [*the principal*], at the rate of £— per cent. per annum (*b*), down to the same half-yearly days of

Proviso for continuance of loan.

(*a*) It is thought by many that the words in square brackets should not be inserted in a provision of this description. And see n. (*a*), p. 267, *infra*. The following addition (as to which see *Wrigley* v. *Gill*, [1906] 1 Ch. 165) may be made to the clause when appropriate, and also, *mutatis mutandis*, to the next following clause:—

Provision for reduction of interest (or continuance of loan) not to operate if principal security enforced.

"PROVIDED ALWAYS that if the mortgagee shall enter into possession or receipt of the rents and profits of the mortgaged premises, or if any proceeding or action shall be taken by or on behalf of any person interested under any of the prior mortgages and charges aforesaid, for the purpose of exercising or enforcing over or against the same premises or any part thereof any of the powers or remedies thereby respectively given or created, or of recovering against or upon the same premises or any part thereof any of the principal monies or interest thereby respectively secured, then and in either of the said cases the provision lastly hereinbefore contained for the reduction of the rate of interest [continuance of the loan] shall cease to have any operation."

(*b*) If the mortgage contains, as in the text, a proviso for reduction of interest, this rate should be the reduced rate.

PRECEDENT LV.

OF LEASEHOLDS.

payment respectively, and shall perform and observe all the covenants on the part of the mortgagor [respectively] herein by statute implied [and hereinafter contained (*a*)], then the mortgagee shall not before the said —— day of ——, 19—, call in the same sum, or any part thereof. PROVIDED ALSO, that the mortgagor shall not before the said —— day of ——, 19—, compel the mortgagee to receive the said sum of £——, or any part thereof (*b*). AND THE MORTGAGOR doth hereby covenant with the mortgagee, that he the mortgagor, will, so long as any money shall remain on the present security, keep the said messuages and buildings insured against loss or damage by fire in the sum of £—— at the least, and will pay all premiums and sums of money necessary for such purpose, on the first day on which the same respectively ought to be paid, and will on demand produce to the mortgagee, the policy or policies of such insurance, and the receipt for every such payment (*c*) [*Covenant against registration, if appropriate, supra*, p. 246. *Mortgagee's indemnity clause, supra*. p. 246. *Interpretation clause*, p. 240]. IN WITNESS, &c.

Covenant to insure against loss by fire.

(*a*) Unless the mortgage contains covenants by the mortgagor for insurance against fire (as here), or for keeping up any policy of life assurance, the words in brackets may be omitted.

(*b*) The following clause, though probably unnecessary, may be added here:—

"Provided always that for the purposes of the power of sale and other powers in these presents implied by statute the said sum of £—— shall be deemed to become due on the said —— day of —— next [*the day on which it is covenanted to be paid*]."

(*c*) See *supra*, p. 264, n., and compare the similar covenant on pp. 263, 264. Clauses as to leasing and consolidation may be added if desired, see *supra*, p. 247.

LVI.

PRECEDENT LVI.

MORTGAGE *of* FREEHOLDS *and* COPYHOLDS *with* PROVISION *for* PAYMENT *by* INSTALMENTS.

OF FREEHOLDS AND COPYHOLDS.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*mortgagor*] (hereinafter called the mortgagor), of the one part, and B., of, &c. [*mortgagee*] (hereinafter called the mortgagee), of the other part, WITNESSETH, that, in consideration of £——, this day paid to the mortgagor by the mortgagee (the receipt whereof the mortgagor doth hereby acknowledge), he the mortgagor AS BENEFICIAL OWNER doth hereby grant unto the mortgagee, his heirs and assigns [*freehold parcels, supra*, p. 211], TO HOLD the premises UNTO and TO THE USE of the mortgagee, his heirs and assigns: PROVIDED ALWAYS, that if the mortgagor shall pay to the mortgagee the sum of £—— [*the principal*], with interest for the same in the meantime at the rate of £— per cent. per annum, on the —— day of —— next, then the mortgagee will, at any time thereafter, upon the request and at the cost of the mortgagor, reconvey the premises unto the mortgagor, his heirs and assigns, or as he or they shall direct. AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, he the mortgagor, as BENEFICIAL OWNER, doth hereby covenant with the mortgagee, that the mortgagor, and all other necessary parties (if any), will forthwith effectually surrender into the hands of the lord of the manor of ——, in the county of ——, according to the custom thereof [*parcels*, p. 212], TO THE USE of the mortgagee, his heirs and assigns, according to the custom of the said manor, and by and under the accustomed rents, fines, suits, and services, and SUBJECT to a condition for making void the said surrender corresponding with the proviso for redemption hereinbefore contained. AND FURTHER, that [*premises shall stand charged, ut supra*, p. 259. *Covenant for payment of principal and interest*,

Parties.

Witnesseth.

Consideration.

Receipt.

Conveyance of freeholds.

Habendum.

Proviso for redemption.

Witnesseth, secondly.

Covenant to surrender copyholds to the use of the mortgagee; subject to a condition for making void the surrender.

and interest after default, supra, pp. 245, 246]. PROVIDED ALWAYS, and it is hereby agreed, that if the mortgagor shall pay to the mortgagee the said sum of £——, with interest for the same at the rate aforesaid, to be computed from the date of these presents, by the instalments at the times and in manner hereinafter mentioned (that is to say), the said principal sum by equal yearly instalments of £—— each, whereof the first is to be paid on the —— day of —— next, and a subsequent instalment is to be paid on every subsequent —— day of ——, and the interest by half-yearly payments on every —— day of —— and —— day of ——, whereof the first is to be made on the —— day of —— next, or (as to each such payment of principal and interest) shall make the same within thirty days after the day so appointed for payment thereof respectively, and if the mortgagor shall also duly observe and perform the covenants herein on his part by statute implied (*a*), then the mortgagee shall accept payment of the said sum of £——, and interest by the instalments at the times and in manner aforesaid. PROVIDED ALWAYS that the mortgagor shall be at liberty at any time or times, upon giving to the mortgagee at least one calendar month's notice in writing of his intention so to do, to pay off all or any part of the principal money for the time being owing on the security of these presents, so that not less than £—— be so paid at any one time, and that upon any such payment of principal the interest on the principal sum paid off down to the time of such payment be fully paid, and that any such partial payment by anticipation shall not interfere with the payment in regular course of the instalments of principal subsequently payable pursuant to the provision

Proviso for payment by instalments.

Power to mortgagor to anticipate payments (*b*).

(*a*) Add, if the mortgage contains covenants by the mortgagor for insurance or otherwise, "and hereinafter contained." And see also and compare the form, pp. 266, 267.

(*b*) This is not a necessary part of the agreement for payment by instalments.

PRECEDENT LVI.

OF FREEHOLDS AND COPYHOLDS.

hereinbefore contained, but shall only have the effect of accelerating the ultimate payment of the monies remaining on the security of these presents. PROVIDED ALWAYS, and it is hereby declared, that for the purposes of the power of sale and other powers in these presents by statute implied the said sum of £—— (*the principal sum secured*) shall be deemed to become due on the said —— day of —— next [*the day on which it is covenanted to be paid. Covenant against registration of the freeholds, supra,* p. 246. *Mortgagee's indemnity clause, supra,* p. 246. *Interpretation clause,* p. 240] (*a*). IN WITNESS, &c.

THE SCHEDULE above referred to.

Part I. Part II.

(*a*) The clause as to leasing powers, *supra*, pp. 246, 247, may be added if desired. The following is a power enabling the mortgagor to redeem on notice :—

Power to redeem on notice.

"PROVIDED ALWAYS that it shall be lawful for the mortgagor, on giving three calendar months' written notice to the mortgagee of the desire so to do, and on payment of the expenses of the mortgagee with his solicitors and surveyors in reference to such notice and in carrying out the same, and also a fee of £—— to the mortgagee, from time to time or at any time to redeem any part or parts or all of the premises comprised in this security, provided the surveyor to the mortgagee, in case of any partial redemption, shall report that the amount proposed to be repaid to the mortgagee is sufficient, regard being had as well to the property proposed to be redeemed as to the property left in mortgage, and also provided that the mortgagee shall be secured in respect of the premises proposed to be redeemed against any use of the same by the mortgagor which would be detrimental to the mortgagee, in respect of the remainder of the property included in this security."

LVII.

Mortgage *of* Freeholds *and* Leaseholds.

Precedent LVII. — of freeholds and leaseholds.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*mortgagor*] (hereinafter called the mortgagor), of the one part, and B., of, &c. [*mortgagee*] (hereinafter called the mortgagee), of the other part. WHEREAS, &c. [*recite the lease, and its having become vested in the mortgagor, ut supra*, pp. 194, 195]. AND WHEREAS the mortgagee has agreed to lend the mortgagor the sum of £——, upon having the repayment thereof, with interest, as hereinafter mentioned, secured in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of £—— to the mortgagor, this day paid by the mortgagee (the receipt whereof the mortgagor doth hereby acknowledge), he the mortgagor, AS BENEFICIAL OWNER, doth hereby grant unto the mortgagee, his heirs and assigns [*freehold parcels, supra*, p. 211], TO HOLD the premises UNTO and TO THE USE of the mortgagee, his heirs and assigns. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and for the consideration aforesaid, he the mortgagor, AS BENEFICIAL OWNER, doth hereby demise unto the mortgagee ALL THOSE —— hereditaments and premises by the said indenture of the —— day of —— expressed to be demised, which said premises are delineated in the said plan in the margin of these presents and therein coloured —— (*a*), TO HOLD the said premises unto the mortgagee, for the residue of the said term of —— years, except the last day thereof: PROVIDED ALWAYS, that if the mortgagor shall pay unto the mortgagee the said sum of £—— [*the principal*], with interest for the same in the meantime at the rate of £— per cent. per annum, on the —— day of —— next, then the mortgagee

Parties.
Recital of lease.
Recital of agreement for mortgage.
Witnesseth.
Consideration.
Receipt.
Conveyance of freeholds.
Habendum.
Witnesseth, secondly.
Demise of leaseholds.
Habendum.
Proviso for redemption.

(*a*) See *supra*, p. 196, n. (*a*).

PRECEDENT LVII.

OF FREEHOLDS AND LEASEHOLDS.

will, at any time thereafter, upon the request and at the cost of the mortgagor, reconvey the said premises hereinbefore granted to the use of the mortgagor, his heirs and assigns, or as he or they shall direct, and surrender the said premises hereinbefore demised, unto the mortgagor, his executors, administrators, or assigns. [*Declaration of trust of the last day of the term, and power of attorney, supra*, pp. 262, 263, *referring to the premises as* "the said leasehold premises" (*a*). *Covenant for payment of principal and interest, and of interest after default*, pp. 245, 246.] AND, by way of variation of the provisions of the Conveyancing and Law of Property Act, 1881, as to the power of sale thereby given to a mortgagee, IT IS HEREBY DECLARED that the mortgagee shall pay such residue (if any) of the monies arising from a sale under the aforesaid power of the said freehold and leasehold premises, or any part thereof, as under the aforesaid provisions is made payable to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof, unto the mortgagor, his executors, administrators, or assigns (whose receipt shall be a sufficient discharge for the same), as personal estate (*b*). [*Covenant against registration of the freeholds, and of the leaseholds, if appropriate, supra*, p. 246; *Mortgagee's indemnity clause, supra*, p. 246; *Interpretation clause*, p. 240.] IN WITNESS, &c.

Trust of surplus purchase-money arising under statutory power of sale.

THE SCHEDULE above referred to.

(*a*) See as to this declaration of trust, *supra*, p. 263, n. (*a*).

(*b*) Where, as here, the mortgaged property is partly real and partly personal estate, it is convenient to avoid any question as to the apportionment of sale monies, by making any surplus personal estate as between the real and personal representatives of the mortgagor. See the Conv. Act, 1881 (App. IV., *infra*), s. 21; and see, as to the equity of redemption in such cases, *Hall* v. *Heward*, 32 Ch. D. 430. Clauses as to leasing and consolidation may be added if desired, see *supra*, p. 247, n. (*a*).

LVIII.

MORTGAGE *of* FREEHOLDS, COPYHOLDS, *and* LEASEHOLDS.

PRECEDENT LVIII. — OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*mortgagor*] (hereinafter called the mortgagor), of the one part, and B., of, &c. [*mortgagee*] (hereinafter called the mortgagee), of the other part. WHEREAS, &c. [*recite the lease, and its being vested in the mortgagor, ut supra*, pp. 194, 195]. AND WHEREAS the mortgagor has agreed to lend the mortgagor the sum of £——, upon having the repayment thereof, with interest, as hereinafter mentioned, secured in manner hereinafter appearing. Now THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of £—— to the mortgagor this day paid by the mortgagee (the receipt whereof the mortgagor doth hereby acknowledge), he the mortgagor, AS BENEFICIAL OWNER, doth hereby grant unto the mortgagee, his heirs and assigns [*freehold parcels, supra*, p. 211], TO HOLD the premises UNTO and TO THE USE of the mortgagee, his heirs and assigns. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and for the consideration aforesaid, he the mortgagor, AS BENEFICIAL OWNER, doth hereby demise unto the mortgagee ALL THOSE —— hereditaments and premises by the said indenture of the —— day of —— expressed to be demised, which said premises are delineated in the said plan in the margin of these presents, and therein coloured —— (*a*), TO HOLD the said premises UNTO the mortgagee, for the residue of the said term of —— years, except the last day thereof: PROVIDED ALWAYS, that if the mortgagor shall pay unto the mortgagee the sum of £ —— [*the principal*], with interest for the same in the meantime at the rate of £— per cent. per annum, on the —— day of —— next,

Parties.

Recital of lease;

—of agreement for mortgage.

Witnesseth.

Conveyance of freeholds.

Habendum.

Witnesseth, secondly.

Demise of leaseholds.

Habendum.

Proviso for redemption.

(*a*) See *supra*, p. 196, n. (*a*).

PRECEDENT LVIII.

OF FREEHOLDS, COPYHOLDS, AND LEASEHOLDS.

then the mortgagee will, at any time thereafter, upon the request and at the cost of the mortgagor, reconvey the said premises hereinbefore granted to the use of the mortgagor, his heirs and assigns, or as he or they shall direct, and surrender the said premises hereinbefore demised unto the mortgagor, his executors, administrators, or assigns. [*Declaration of trust of last day of term, supra*, pp. 262, 263, *referring to the premises as* "the said leasehold premises," *and power of attorney* (*a*).]

Witnesseth, thirdly.

AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and for the consideration aforesaid, he the mortgagor doth hereby covenant with the mortgagee, that he the mortgagor, and all other necessary parties (if any), will forthwith effectually surrender into the hands of the lord of the manor of ——, in the county of ——, according to the custom thereof [*parcels, supra*, p. 212], TO THE USE of the mortgagee his heirs and assigns, according to the custom of the said manor, and by and under the accustomed rents, fines, suits, and services, and subject to a condition for making void the said surrender, corresponding with the proviso for redemption hereinbefore contained (*b*). AND FURTHER, that [*premises shall stand charged, ut supra*, p. 259; *Covenant for payment of principal and interest, and of interest after default, supra*, pp. 245, 246; *Trust of surplus sale monies arising under power of sale, supra*, p. 272, *but saying*, "the said freehold, copyhold, and leasehold premises." *Covenant against registration as to the freeholds, and as to the leaseholds, if appropriate, supra*, p. 246. *Mortgagee's indemnity clause, supra*, p. 246; *Interpretation clause, supra*, p. 240 (*c*)]. IN WITNESS, &c.

Covenant to surrender copyholds,

to the use of mortgagee; subject to a condition for making void the surrender.

Covenant by mortgagor for payment of interest.

THE SCHEDULE above referred to.

Part I. Part II.

(*a*) See *supra*, p. 263, n. (*a*), as to this declaration of trust.

(*b*) See *supra*, p. 259, n. (*a*).

(*c*) Other clauses may be inserted if desired as on p. 247.

LIX.

Mortgage by Tenants in Common *of* Freehold Land subject *to a* Rentcharge.

Precedent LIX.

Of land subject to a rentcharge.

THIS INDENTURE, made, &c., BETWEEN A., B., and C., of, &c. [*mortgagors*] (hereinafter called the mortgagors), of the one part, and B., of, &c. [*mortgagee*] (hereinafter called the mortgagee), of the other part, WITNESSETH, that in consideration of £——, this day paid to the mortgagors by the mortgagee (the receipt whereof the mortgagors do hereby acknowledge), they the mortgagors AS BENEFICIAL OWNERS do and each of them as beneficial owner doth hereby grant unto the mortgagee, his heirs and assigns [*parcels, ut supra*, p. 216, *down to the reference to the colour*], together with the dwelling-house and buildings erected thereon, and known as ——, TO HOLD the premises UNTO and TO THE USE of the mortgagee, his heirs and assigns [*remainder of habendum, subject to rentcharge, ut supra*, p. 224]. Provided always that if the mortgagors or one of them shall pay to the mortgagee on the —— day of —— next the sum of £—— [*the principal*] with interest for the same in the meantime at the rate of £— per cent. per annum, then the mortgagee will, upon the request and at the cost of the mortgagors or one of them, reconvey the said premises unto the mortgagors their respective heirs and assigns or as they shall direct subject to the rentcharge aforesaid. [*Covenant for payment of principal and interest, and of interest after default, ut supra*, pp. 245, 246, saying, "the mortgagors do hereby jointly and severally covenant with the mortgagee that the mortgagors or one of them will," &c.] AND FURTHER, that the mortgagors or one of them will, so long as any money remains on the security of these presents, pay [*rentcharge and perform covenants, ut supra*, p. 224], and also produce to the mortgagee, on demand, the policy or policies of such insurance as afore-

Parties.

Witnesseth.

Consideration.

Receipt.

Operative words.

Habendum.

Proviso for redemption.

Covenant by mortgagors to pay rentcharge and perform covenants;

—and to produce policy.

PRECEDENT LIX.

OF LAND SUBJECT TO A RENTCHARGE.

said, and the receipt for the current year's premium or premiums in respect thereof. [*Covenant against registration, supra*, p. 246, saying, "The mortgagors do hereby jointly and severally covenant," &c.] [*Mortgagee's indemnity clause and provision as to leasing*, p. 246, saying for "the mortgagor shall not exercise," &c., "the mortgagors shall not nor shall any of them exercise," &c.] Provided always that unless such an interpretation is inconsistent with the context, the expression "the mortgagors" hereinbefore used shall include their respective heirs, executors, administrators, and assigns, and the expression "the mortgagee" hereinbefore used shall include his executors, administrators, and assigns (*a*). IN WITNESS, &c.

Interpretation clause.

LX.

PRECEDENT LX.

BY PARTNERS TO A BANK.

MORTGAGE *by* PARTNERS *to a* BANK, *for securing an* ACCOUNT CURRENT.

THIS INDENTURE, made, &c., BETWEEN A., B., and C., of, &c., carrying on business in partnership as ——, under the firm of A. & Co. [*mortgagors*], (hereinafter called the mortgagors), of the one part, and E., F., and G., of, &c., carrying on business in partnership as bankers under the firm of E. & Co. [*mortgagees*], (hereinafter called the bankers), of the other part: WHEREAS the mortgagors are seised of the hereditaments hereinafter granted for a joint (*b*) estate of inheritance in fee simple

Parties.

Recital of seisin of partners.

(*a*) If the mortgage were by joint tenants, the mortgagors would more properly be defined as including "the [survivors and] survivor of them and the heirs, executors, or administrators of such survivor, his and their assigns."

(*b*) Partnership property is perhaps more commonly vested in the partners as joint tenants than as tenants in common. And it is only in a very loose sense that they can be regarded as tenants in common in equity of any particular portion of the partnership property.

PRECEDENT LX.

BY PARTNERS TO A BANK.

in possession free from incumbrances; AND WHEREAS the mortgagors have opened [*or* keep] an account with the said bank of E. & Co., for and in the name of the said firm of A. & Co.; AND WHEREAS the bankers, or their said firm of E. & Co., may make advances on loans or grant other accommodation to the mortgagors or their said firm of A. & Co., and it has been agreed that the payment of all such sums as shall by means thereof become owing by the said firm of A. & Co. to the said firm of E. & Co., shall be secured in manner hereinafter appearing: NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the premises, they the mortgagors do, and, as separate covenants, every two of them do and each of them doth, hereby covenant with the bankers, that they the mortgagors or the persons or person for the time being carrying on or having carried on business in the name of the said firm of A. & Co., or some or one of them, their or some or one of their heirs, executors, or administrators, will, on demand made to them or any of them, or left upon any part of the hereditaments hereinafter granted, pay to the bankers, or the persons or person for the time being carrying on business in the name of the said firm of E. & Co., or to one of the cashiers for the time being of the said bank, the balance which, on the account current of the said firm of A. & Co., with the said bank, shall for the time being be owing for bills, notes and drafts accepted, paid, or discounted, and for other loans, credits, or advances made to or for the accommodation or at the request of the mortgagors, or the persons or person for the time being carrying on business in the name of the said firm of A. & Co., and for interest, commission, and other lawful charges, together with interest on such balance, from the day of such demand having been made or left till the actual payment thereof, at the rate of —— per cent. per annum. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agree-

Of partners having an account with the bank;

—of the agreement for the security.

Witnesseth.

Consideration.

Covenant for payment of balance on account current.

Witnesseth, secondly.

PRECEDENT LX.

BY PARTNERS TO A BANK.

Conveyance.

ment, and for the consideration aforesaid, the mortgagors as BENEFICIAL OWNERS do, and each of them severally as BENEFICIAL OWNER, and by the direction of the others, and of each of the others of them severally DIRECTING as BENEFICIAL OWNERS and OWNER respectively doth, hereby grant unto the bankers, their heirs and assigns, ALL AND SINGULAR the mill, engine-house, lands, messuages or cottages and buildings situate in the parish of ——, in the county of ——, the particulars whereof are specified in the schedule hereto, and which are delineated in the plan on the —— skin of these presents and therein coloured ——, the numbers in the first column of the same schedule referring to the same numbers on the said plan: To HOLD the premises UNTO and TO THE USE of the bankers, their heirs and assigns: PROVIDED ALWAYS, that, if the mortgagors, or the persons or person for the time being carrying on or having carried on business in the name of the said firm of A. & Co., or any of them, their or any of their heirs, executors, administrators, or assigns shall, on demand made or left as aforesaid, or without such demand having been made or left, pay to the bankers or the persons or person for the time being carrying on business in the name of the said firm of E. & Co., or to one of the cashiers for the time being of the said bank the aforesaid balance [which, on the account current of the said firm of A. & Co. with the said bank, shall for the time being be owing for bills, notes, and drafts, accepted, paid, or discounted, and for other loans, credits or advances made to or for the accommodation or at the request of the mortgagors, or the persons or person for the time being carrying on business in the name of the said firm of A. & Co., and for interest, commission, and other lawful charges], together with (in the case of such demand as aforesaid having been made or left) interest on such balance from the day of such demand having been made or left till the actual payment thereof, at the rate of ——

Parcels, comprising mill, lands, &c.

Habendum.

Proviso for redemption.

PRECEDENT LX.

BY PARTNERS TO A BANK.

per cent. per annum, then the bankers or the survivors or survivor of them, or the executors or administrators of such survivor, their or his assigns, shall at any time after such payment shall have been so made, upon the request and at the cost of the mortgagors, their heirs, executors, administrators, or assigns, reconvey the said premises hereinbefore granted unto the mortgagors, their heirs or assigns, or as they shall direct (*a*). AND THE mortgagors do, and as separate covenants every two of them do, and each of them doth hereby covenant with the bankers, that they the mortgagors or the persons or person for the time being carrying on business in the name of the said firm of A. & Co., their or some or one of their heirs, executors, administrators, or assigns, will, during the continuance of the present security, keep the said premises in a good state of repair and in perfect working order, and also insured against loss or damage by fire in the sum of £—— at the least, in such office or offices as the bankers or the persons or person for the time being carrying on business in the name of the said firm of E. & Co., or the manager for the time being of the said bank shall have approved of, and will punctually pay all premiums and sums of money necessary for such purpose; and will, at any time on demand made or left as aforesaid, produce to the bankers or the persons or person for the time being carrying on business in the name of the said firm of E. & Co., or the manager for the time being of the said bank, or any other officer for the time being of the said bank, or leave at the banking house for the time being in — —, the policy or policies of such insurance, and the receipt for every such payment, and will apply all monies which may be received by virtue of any such policy in making good the loss or damage: AND ALSO, that, if default shall be made in keeping the said premises in such repair and working

Joint and several covenants by mortgagors.

To keep premises in repair, and insured against fire;

—and apply policy monies in making good damage;

—and that, in default by

(*a*) It is conceived that, regard being had to the Conv. Act, 1881 (App. IV., *infra*), s. 30, this is the proper form.

PRECEDENT LX.

BY PARTNERS TO A BANK.

order or insured as aforesaid, the bankers or the persons or person for the time being carrying on business in the name of the said firm of E. & Co., may enter and put into and keep in repair and working order the said premises, or (as the case may require) insure, and keep insured, the same in any sum not exceeding the sum of £——, and may carry any monies expended for that purpose to the credit of the said firm of E. & Co. on the said account current of the said firm of A. & Co. AND IT IS HEREBY provided and declared, that the power of sale in these presents by statute implied shall be exerciseable at any time after the execution of these presents, without any further consent on the part of the mortgagors or any of them, their or any of their executors, administrators, or assigns, or of any other person. AND IT IS HEREBY also declared, that, upon any such sale as aforesaid, the receipt of any of the cashiers for the time being of the said bank for the purchase-monies of the premises sold, shall effectually discharge the purchaser or purchasers therefrom, and from being concerned to see to the application, or being answerable for any loss or misapplication thereof. [*Covenant against registration, supra*, p. 246.] PROVIDED ALWAYS, and it is hereby declared, that the bankers, or any of them, their or any of their executors, administrators, or assigns, shall not be answerable or accountable for any involuntary losses which may happen in or about the execution of any of the powers and trusts herein contained or otherwise vested in them or any of them as mortgagees or mortgagee under these presents. PROVIDED ALWAYS, and it is hereby declared, that these presents are intended to be a security for the balance for the time being owing on the account current of the said the same firms respectively shall consist of the present firm of A. & Co. to the said firm of E. & Co., whether members thereof respectively or of any of them, or of them or any of them together with any other person or persons, or of any other person or persons only, and not-

mortgagors, the mortgagees may insure and repair.

As to power of sale.

Receipt of cashier of bank to be a discharge for the purchase-money.

Mortgagees not to be answerable for involuntary losses.

Declaration as to the nature of the security.

withstanding any change whatsoever in the condition of the same respective firms. IN WITNESS, &c. (*a*).

THE SCHEDULE above referred to.

PRECEDENT LX.

BY PARTNERS TO A BANK.

LXI.

MORTGAGE *of a* POLICY *of* ASSURANCE *for securing a* SUM ALREADY DUE *and* FUTURE ADVANCES (*b*).

PRECEDENT LXI.

OF A POLICY OF ASSURANCE.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*mortgagor*] (hereinafter called the mortgagor), of the one

Parties.

(*a*) The stamp must be sufficient to cover the total amount intended to be secured. And it should be borne in mind that the account must be closed if and when notice of a second mortgage is received. See *Bradford Banking Co.* v. *Briggs*, 31 Ch. D. 19; 12 App. Cas. 29; *West* v. *Williams*, [1899] 1 Ch. 132. As to what amounts to a closing of the account, see *Berry* v. *Halifax, &c. Co., Ltd.*, [1901] 1 Ch. 188. It is conceived that where the land is registered under the Land Transfer Acts, 1875 and 1897 (see *supra*, p. 83 *et seq.*), the bank will take a mortgage in this form with the following addition, and also a registered charge for the amount covered by the stamp according to Form 44 of the Rules of 1903, with the necessary modifications and the special stipulations, A. (1) and B. (4):—

"AND IT IS HEREBY agreed and declared, that the charge No. —— for —— pounds [£——], secured on the premises hereby mortgaged, being [part of] the land comprised in the title, No. —— in the parish [*or* extra parochial place] of ——, in the district of ——, and county of ——, shall operate and take effect as a security for the principal monies and interest intended to be hereby secured upon the terms, and subject to the provisions herein expressed and contained."

Registered charge to constitute a security upon the terms of this mortgage.

Other forms connected with a registered charge will be found in Precedents LXXI. and LXXII., *infra*.

(*b*) As to mortgages for securing further advances, see Davidson's Prec. Conv. 4th ed. vol. ii. pt. ii. pp. 260 and 280, n. (*m*). Any

PRECEDENT LXI.

OF A POLICY OF ASSURANCE.

Witnesseth.

Assignment of policy.

part, and B., of, &c. [*mortgagee*] (hereinafter called the mortgagee), of the other part; WITNESSETH, that, in consideration of £—— owing by the mortgagor to the mortgagee, he the mortgagor, AS BENEFICIAL OWNER, doth hereby assign unto the mortgagee, ALL THAT policy of assurance on the life of the mortgagor, granted by the —— Assurance Society, dated the —— day of ——, numbered ——, for the sum of £——, and under the annual premium of £——, and all monies assured or to become payable by or under the said policy, and the full benefit thereof (*a*), TO HOLD the premises unto the mortgagee. PROVIDED ALWAYS, that, if the mortgagor shall pay to the mortgagee the sum of £—— [*the sum already owing*], with interest for the same in the meantime at the rate of £— per cent. per annum, on the —— day of —— next, and shall also, on such —— day of ——, or —— day of ——, as shall happen next after the time of the same respectively being advanced or becoming due, pay to him such other monies as may be advanced by him to or on account of, or may become due to him from the mortgagor, with interest thereon at the rate aforesaid, from the time or times of the same respectively being advanced or becoming due, then the mortgagee will, at any time thereafter, upon the request and at the cost of the mortgagor, assign the said policy and premises to the

Habendum.

Proviso for redemption.

proviso limiting the amount recoverable under such a mortgage, appears to be better omitted, since under sect. 88 of the Stamp Act 1891 (54 & 55 Vict. c. 39), the deed will be a good security for whatever amount the *ad valorem* stamp will carry; and (if the proviso be omitted) the amount may be extended by increasing the stamp. Observe that this section exempts from the *ad valorem* duty on a mortgage security (omongst other monies) money to be advanced for keeping up any policy of life assurance comprised in such security, or for effecting in lieu thereof any new policy.

Notice of the assignment of a policy of assurance should be given to the office by which it is granted. See p. 232, n. (*a*), *supra*.

(*a*) See *supra*, p. 231, nn., as to assignments of policies of assurance.

PRECEDENT LXI.

OF A POLICY OF ASSURANCE.

mortgagor as he shall direct (*a*). AND THE mortgagor doth hereby covenant with the mortgagee, that he, the mortgagor, will pay unto the mortgagee the said sum of £—— [*the sum already owing*], together with interest for the same in the meantime, at the rate of £— per cent. per annum, on the said —— day of —— next, and will also, on such —— day of ——, or —— day of —— (*b*), as shall happen next after the time of the same respectively being advanced or becoming due, pay to him such other monies (if any) as may be advanced by him to or on account of, or may become due to him from the mortgagor with interest thereon, at the rate aforesaid, from the time or times of the same respectively being advanced or becoming due: AND ALSO if the said sum of £—— [*the sum already owing*], or any sum which may hereafter be

Covenant to pay principal and interest;

—and interest after default;

(*a*) The subjoined clauses were formerly inserted in this place, but seem to be rendered unnecessary by sect. 22 of the Conv. Act, 1881 (App. IV., *infra*).

Trusts of the policy.

"AND IT IS HEREBY DECLARED, that, if the mortgagee shall receive any monies under the said policy, he shall thereout, in the first place, pay the expenses incurred in recovering the same or otherwise, in relation to the premises: AND, in the next place, apply such monies in or towards satisfaction of the monies for the time being owing on the security of these presents; and then pay the surplus (if any) of the said monies to become payable under the said policy to the mortgagor. AND IT IS HEREBY DECLARED, that the receipt of the mortgagee for any monies payable under the said policy shall effectually discharge the said Assurance Society, and all other persons from being concerned to see to the application thereof, or from being bound to see whether default has been made in payment of any money intended to be hereby secured, or whether any money remains on the security of these presents."

Mortgagee's receipt to be a discharge to the Assurance Society.

(*b*) The two half-yearly days for payment of interest.

PRECEDENT LXI.

OF A POLICY OF ASSURANCE.

advanced or become due as aforesaid, shall remain unpaid after the day hereinbefore appointed for payment thereof respectively, will so long as the same sum, or any part thereof, shall remain unpaid, pay to the mortgagee interest for the principal sum for the time being remaining unpaid, at the rate of £— per cent. per annum, by equal half-yearly payments, on the —— day of ——, and the —— day of ——: AND FURTHER, that he the mortgagor will not do or suffer anything whereby the said policy may become void or voidable, or the mortgagee be hindered from receiving all or any of the monies assured by or to become payable under the same; AND THAT if the said policy, or any policy to be effected as hereinafter provided, shall become void, the mortgagor will immediately effect a new policy or policies on his life, in the name of the mortgagee, for a sum or sums not less in the whole than the sum of £——; and that if any such policy as aforesaid shall become voidable the mortgagor will forthwith restore the same; and that every such new policy, and the monies to become payable under the same, shall be subject to the proviso for redemption hereinbefore contained, and to the trusts applicable by virtue of these presents to the said existing policy of assurance, and the monies to become payable under the same, and shall be saleable under the statutory power in that behalf in the same manner in all respects as if originally comprised in these presents (*a*); AND THAT he the mortgagor will, from time to time, pay the said premium of £——, and any other premiums or sums for the time being necessary for keeping on foot the said existing policy, and any

not to vitiate policy;

—if vitiated, to effect new policy;

—to pay the premiums, and repay, with interest, all monies expended by mortgagee in keeping on foot policy;

(*a*) These covenants—not to vitiate the policy, and to effect a new policy—may be dispensed with, if the mortgagee chooses to rely wholly on the existing policy. Otherwise it is desirable to have a specific engagement by the mortgagor to keep an assurance subsisting.

The words referring to a sale under the statutory power are probably not actually necessary. See sect. 19 of the Act.

policy to be effected as aforesaid, on the first day on which the same respectively ought to be paid, and forthwith deliver the receipt for every such payment to the mortgagee, and that the mortgagor will, on demand, repay to the mortgagee all monies (if any) which shall be expended by him in keeping on foot the said existing policy, or effecting or keeping on foot any such new policy as aforesaid, with interest thereon, at the rate aforesaid, from the time or respective times of the same having been expended; AND THAT, until such monies shall be repaid with interest, the said existing policy, ~~any~~ any new policy to be effected as aforesaid, and the monies to become payable under the same respectively shall be charged with the payment thereof. AND IT IS HEREBY DECLARED that any sale, under the statutory power in that behalf, either of the said existing policy or of any new policy to be effected as aforesaid, may be made, either by way of surrender to the office by which the same respectively has been or may be granted, or otherwise (*a*). [*Mort-*

—that till repayment the same shall be a charge on the premises.

Power to surrender policies.

(*a*) If the mortgage is made to the trustees of the assurance society or to the society itself, add here:—

"AND in the event of such sale being made to [*the mortgagees* by way of surrender to themselves, the same shall be valid and unimpeachable if made at the customary surrender value as ascertained by the tables for the time being in use by them or fixed by their actuary or other proper officer for the time being."

It is also usual in mortgages of that description to provide that the principal monies and interest shall be paid at the principal office for the time being of the society. With respect to a mortgage of this kind to the society, it should be observed that its effect may be to extinguish the policy at law, and that a charge on the policy is by some offices preferred for that reason (see Precedent LXVI., *infra*); but of course there is no extinguishment in equity.

PRECEDENT LXI.

OF A POLICY OF ASSURANCE.

gagee's indemnity clause, supra, p. 246; *Interpretation clause*, p. 240.] IN WITNESS, &c.

LXII.

PRECEDENT LXII.

OF AN ESTATE FOR LIFE AND POLICY OF ASSURANCE.

MORTGAGE *of an* ESTATE *for* LIFE *and a* POLICY *of* ASSURANCE *to* SEVERAL. VARIATIONS *for a* STOCK MORTGAGE (*a*).

THIS INDENTURE, made the —— day of ——, 19—, BETWEEN A., of, &c. [*mortgagor*] (hereinafter called the mortgagor), of the one part, and B., of, &c., C., of, &c., and D., of, &c. [*mortgagees*] (hereinafter called the mortgagees), of the other part. WHEREAS by an indenture dated the —— day of ——, and expressed to be made between [*parties*], the hereditaments hereinafter granted were, in exercise of a power therein referred to, appointed, and granted, to the use of the mortgagor and his assigns during his life, without impeachment of waste. AND WHEREAS the mortgagor is entitled to the policy of assurance on his own life, hereinafter assigned. AND WHEREAS the mortgagees have agreed to lend to the mortgagor the sum of £—— (*b*), upon having the repayment thereof, with interest at the rate hereinafter mentioned, secured in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of £——, this day paid to the mort-

Parties.

Recital of settlement creating the life estate;

—that mortgagor is entitled to policy;

—of agreement for the mortgage.

Witnesseth.

Consideration.

(*a*) In this Precedent the policy is assumed to be in the name of the mortgagor, but in the next Precedent the policy is assumed to have been effected in the name of the mortgagee, as is sometimes done when the policy is effected contemporaneously with the mortgage, though it is more usual now to effect the policy in the name of the mortgagor. Where the land is registered, see the observations, *supra*, pp. 104—106.

(*b*) The principal sum.

PRECEDENT LXII.

OF AN ESTATE FOR LIFE AND POLICY OF ASSURANCE.

gagor by the mortgagees, out of monies belonging to them on a joint account (the receipt of which sum the mortgagor doth hereby acknowledge), HE the mortgagor AS BENEFICIAL OWNER doth hereby grant, bargain, sell (*a*), and demise unto the mortgagees [*parcels, supra,* pp. 138, 164, &c.], TO HOLD the premises UNTO the mortgagees for the term of ninety-nine years from the date hereof, if the mortgagor shall so long live, without impeachment of waste. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and for the consideration aforesaid, &c. [*assignment of policy,* p. 231, *supra, mutatis mutandis*]. PROVIDED ALWAYS, that, if the mortgagor shall, on the —— day of —— next, pay to the mortgagees the sum of £——, with interest for the same, in the meantime, at the rate of £— per cent. per annum, then the mortgagees shall, at any time thereafter, upon the request and at the cost of the mortgagor, surrender the said premises hereinbefore demised, and reassign the said premises hereinbefore assigned, unto the mortgagor, or as he shall direct. [*Trusts (if desired) of the policy, and mortgagee's receipt clause, substituting* "mortgagees" *for* "mortgagee," *supra,* p. 283, n. *Cove-*

Receipt.

Grant of life estate.

Habendum for term of years.

Witnesseth.

Assignment of policy.

Proviso for redemption.

(*a*) The words "bargain and sell" will, without enrolment in this case, give the mortgagee an actual estate without entry. As to the effect of the Statute of Uses in vesting an actual estate without entry, see *Heelis* v. *Blain,* 18 Com. B., N. S. 90; *Orme's Case,* L. R. 8 C. P. 281; *Hadfield's Case, ibid.* 306; and *Lowcock* v. *Overseers of Broughton,* 12 Q. B. D. 369. The life estate is demised in order to avoid the risk of destroying annexed powers of leasing and the like, though it seems clear that an assignment of the life estate would not affect such powers further than by preventing them from being exercised to the prejudice of the assignee (*Alexander* v. *Mills,* L. R. 6 Ch. 124; *Hardaker* v. *Moorhouse,* 26 Ch. D. 417; *Re Bedingfield & Herring's Contract,* [1893] 2 Ch. 332; *Earl of Lonsdale* v. *Lowther,* [1900] 2 Ch. 687; and see *Re Cooper, Cooper* v. *Slight,* 27 Ch. D. 565), as in effect is provided by the Settled Land Act, 1882, App. VII., *infra,* with reference to the statutory powers. See also *Re Wright's Trustees & Marshall,* 28 Ch. D. 93.

PRECEDENT LXII.

OF AN ESTATE FOR LIFE AND POLICY OF ASSURANCE.

nant by the mortgagor for payment of principal and interest, and of interest after default, supra, pp. 251, 252.]

AND THE mortgagor doth hereby covenant with the mortgagees, that he the mortgagor will not do or suffer anything whereby the said policy of assurance may become void or voidable, or the mortgagees be hindered from receiving all or any of the monies assured, or to become payable under the same. AND THAT if the said policy or any policy to be effected as hereinafter provided shall become voidable, the mortgagor will forthwith at his own cost, do all things necessary for restoring and keeping on foot the same. AND THAT if the said policy or any such policy as aforesaid shall become void, the mortgagor will immediately effect a new policy or policies on his life, in the names of the mortgagees, or such name or names as they shall direct, in such sum or sums of money as shall amount to the sum which would have been payable under the policy which shall have become void if the mortgagor had then died. AND THAT every such new policy and the monies to become payable under the same, shall be subject to the proviso for redemption hereinbefore contained, and to the trusts and powers applicable by virtue of these presents to the said policy of assurance hereinbefore assigned, and the monies to become payable under the same (*a*). AND THAT he the mortgagor will, from time to time, pay the said premium of £——, and any other premiums or sums for the time being necessary for keeping on foot the said policy hereinbefore assigned, and any new policy to be effected as aforesaid, on the first day on which the same respectively ought to be paid, and forthwith deliver to the mortgagees the receipt for every such payment. AND that the mortgagor will, on demand, repay to the mortgagees all monies (if any) which shall be expended by them in keeping on foot the said policy hereinbefore assigned or effecting or keeping

Covenants by mortgagor not to vitiate the policy;

—if vitiated, to effect new policy;

—to pay the premiums;

—and repay with interest all monies expended by the mortgagees in

(*a*) See *supra*, p. 284, n. (*a*).

on foot any such new policy as aforesaid, and all costs and expenses incurred by them in relation to the premises, with interest thereon at the rate aforesaid from the time or respective times of the same having been expended or incurred. AND THAT until such monies shall be repaid with interest as aforesaid, the said premises hereinbefore demised and assigned respectively, and the monies to become payable under the said policy hereinbefore assigned, or any new policy to be effected as aforesaid shall be charged with the payment thereof. [*Power to surrender policies, covenant against registration, and mortgagee's indemnity clause, supra*, pp. 285, 246, 240.] PROVIDED ALWAYS, and it is hereby agreed that nothing herein contained shall affect any of the powers by the Settled Land Acts, 1882 to 1890, or by the said indenture of the —— day of ——, or by reference thereto or otherwise given to or vested in the mortgagor, of leasing, selling, or exchanging, or of consenting to leases, sales, or exchanges of the premises hereinbefore demised, or of jointuring or charging portions or of any other description; but all such powers shall be exerciseable as if these presents had not been executed, so nevertheless that the life estate or interest of the mortgagor in the rents and profits of the said premises and in all hereditaments, monies, stocks, funds, shares and securities or other property which, by means or in consequence of any sale or exchange or other exercise of any such powers, may be substituted for the said premises or any part thereof shall be subject in equity to the present security (*a*). [*Interpretation clause, supra*, p. 252] (*b*). IN WITNESS, &c.

keeping on foot the policy.

That until repayment the same shall be charged on the premises.

Proviso as to mortgagor's powers under settlement and Settled Land Acts.

THE SCHEDULE above referred to.

(*a*) This provision is often objected to by mortgagees, but it is not unusual, and the circumstances of some settled estates are such as to render it almost essential.

(*b*) If it is desired to secure the retransfer of stock sold to raise the sum advanced, the following clause (which seems preferable, at

PRECEDENT LXII.

OF AN ESTATE FOR LIFE AND POLICY OF ASSURANCE.

least where trustees are concerned, to the ordinary stock mortgage, as to which see Davidson's Prec. Conv., vol. ii. pt. ii. 4th ed. p. 624, n. (*a*), and *Bromley* v. *Kelly*, 39 L. J. Ch. 274) may be inserted before the interpretation clause:—

Provision for the transfer of stock in lieu of payment of the principal.

"PROVIDED ALWAYS, that the mortgagees may elect, in lieu of the payment to them, pursuant to the covenant hereinbefore contained, of the said sum of £—— [*the sum advanced*], or so much thereof as shall for the time being remain unpaid, to have the sum of £—— Two-and-a-half per Cent. Consolidated Stock [*the amount of stock sold*] transferred into their names, and that in the event of such election being made, the sum of £—— like stock shall be taken by the mortgagees in full satisfaction of the said sum of £—— [*the sum advanced*] hereby secured, and all covenants and provisions herein contained, or by statute implied for securing and enforcing the payment of the said sum of £ —— [*the sum advanced*] (including the power for the mortgagees to apply in satisfaction thereof monies produced by a sale under the statutory power of sale), shall be applicable for securing and enforcing the transfer into the names of the mortgagees, of the said sum of £—— like stock as aforesaid, and that such election may be made by the mortgagees at any time until the whole of the said sum of £—— [*the sum advanced*] shall have been actually repaid to them, and so that if a part only of the said sum of £—— [*the sum advanced*] shall remain unpaid, a proportionate part of the said sum of £— – like stock shall be transferable in satisfaction of the principal sum so remaining unpaid."

LXIII.

Mortgage *of a* Contingent Estate *in* Freeholds, *and of a* Policy *of* Assurance (*a*).

Precedent LXIII.

Of a contingent estate and policy of assurance.

THIS INDENTURE, made, &c., between A., of, &c. [*mortgagor*] (hereinafter called the mortgagor), of the one part, and B., of, &c. [*mortgagee*] (hereinafter called the mortgagee), of the other part. Whereas, &c. [*recite the creation of the contingent estate; see recital, supra,* p. 187, *which must be here modified so as to apply to freeholds*]. And whereas the mortgagee has agreed to lend to the mortgagor the sum of ——, upon having the repayment of the same with interest, as hereinafter mentioned, secured in manner hereinafter appearing. And whereas, as part of the said intended security, the mortgagor has effected an insurance, in the name of the mortgagee, with the —— Assurance Society, by a policy numbered ——, dated ——, and under the annual premium of £——, for the sum of £—— to become payable if the mortgagor shall die in the lifetime of the said —— (*b*). Now this indenture witnesseth, that, &c. [*statement of, and receipt for consideration, supra,* p. 245], he the mortgagor as beneficial owner (*c*) doth hereby grant and dispose of (*d*) unto the mortgagee, his heirs and assigns, all that, &c. [*see the parcels, supra,* p. 188], to hold the premises unto and to the use of the mortgagee, his heirs and assigns, subject to the estate for life therein of the said ——, and to the contingency of the estate and interest therein of the mort-

Parties.

Recital of creation of estate;

—of agreement for mortgage;

—of a policy of assurance having been effected.

Witnesseth.

Conveyance of the estate.

Habendum.

(*a*) See n. (*a*) at p. 286, *supra*.

(*b*) The tenant for life and mother of the mortgagor. See *supra*, p. 187.

(*c*) See *supra*, p. 245, n. (*b*).

(*d*) See the words of sect. 6 of the statute 8 & 9 Vict. c. 106 (App. I., *infra*).

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OF A CONTINGENT ESTATE AND POLICY OF ASSURANCE.

gagor being defeated by his death in the lifetime of the said ——. PROVIDED ALWAYS, that if the mortgagor shall pay to the mortgagee the sum of £——, with interest for the same in the meantime at the rate of £— per cent. per annum, on the —— day of —— next, then the mortgagee will, at any time thereafter, upon the request and at the cost of the mortgagor, re-convey the said premises (subject as aforesaid) unto the mortgagor, his heirs and assigns, and assign the aforesaid policy of assurance, and the monies assured by or to become payable under the same, unto the mortgagor, his executors, administrators, or assigns, or as he or they shall respectively direct. [*Trusts of the policy, supra,* p. 283, n. (*if desired*); *covenant to pay principal and interest, and interest if the principal remain unpaid after the day appointed, supra,* pp. 245, 246; *covenants as to the policy, supra,* pp. 284, 285.] AND IT IS HEREBY DECLARED, that any sale under the statutory power in that behalf, either of the said existing policy, or any new policy to be effected as aforesaid, may be made either by way of surrender to the office by which the same has been or may be granted, or otherwise (*a*), and that the residue of the money which shall arise from any sale under the statutory power in that behalf either of the said premises hereinbefore granted and disposed of or any part thereof, or of the said policy of assurance hereinbefore mentioned to have been effected, or any policy to be hereafter effected as aforesaid, and which shall be received by the mortgagee, and shall not be applied in payment of costs, charges, and expenses, or in discharge of money due on the security of these presents, shall be paid to the mortgagor as personal estate. [*Mortgagee's indemnity clause, supra,* p. 246; *Interpretation clause,* p. 240.] IN WITNESS, &c.

Proviso for redemption.

Trusts and covenants.

Variation of statutory power of sale.

(*a*) See *supra,* p. 284, n. (*a*).

LXIV.

Mortgage *of* Life Interest *in* settled Personal Estate, *and of* Policies *of* Assurance.

Precedent LXIV.

Of life interest in settled personal estate and policy.

THIS INDENTURE, made, &c., between A., of, &c. [*mortgagor*] (hereinafter called the mortgagor), of the one part, and C., of, &c., D., of, &c., and E., of, &c. [*mortgagees*] (hereinafter called the mortgagees), of the other part: Whereas, under an indenture, dated, &c., and expressed to be made between [*parties*] (being a settlement made in consideration of the marriage then intended and shortly afterwards solemnised between the mortgagor and the said M.), the mortgagor became entitled to receive for his own benefit during his life the income of certain funds thereby settled by or on behalf of the mortgagor, or of any funds which by means of any change of investment or otherwise might represent the same [therein and hereinafter referred to as the husband's fund], and also in the event of his surviving the said M. to receive for his own benefit from and after her death, and during the remainder of his life, the income of certain funds thereby settled by or on behalf of the said M., or of any funds which by means of any change of investment or otherwise might represent the same [therein and hereinafter referred to as the wife's fund]; And whereas the aforesaid funds by the said indenture of settlement settled by or on behalf of the mortgagor [husband's fund] now consist [consists] of or are [is] represented by the stocks, funds, shares, and securities specified in the first schedule hereto, and the aforesaid funds by the said indenture of settlement settled by or on behalf of the said M. [wife's fund] now consist [consists] of or are [is] represented by the stocks, funds, shares, and securities specified in the second schedule hereto, all of which are now standing in the names or under the legal control of P. and Q. as the present trustees of the same indenture: And whereas the mortgagor is entitled to the

Parties.

Recitals.

Settlement creating life interest.

Present state of investment.

Title to policies.

PRECEDENT LXIV.

OF LIFE INTEREST IN SETTLED PERSONAL ESTATE AND POLICY.

policies of assurance upon his own life described in the third schedule hereto: AND WHEREAS the mortgagees have agreed to lend to the mortgagor the sum of £—— upon having the repayment thereof with interest at the rate hereinafter mentioned secured in manner hereinafter appearing: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of £—— this day paid to the mortgagor by the mortgagees out of monies belonging to them on a joint account (the receipt whereof the mortgagor doth hereby acknowledge), he the mortgagor AS BENEFICIAL OWNER doth hereby assign unto the mortgagees: FIRST, ALL the income which during the life of the mortgagor shall arise from the monies, stocks, funds, shares, and securities now or at any time hereafter constituting or representing the fund by the said indenture of settlement settled by or on behalf of the mortgagor [husband's fund]: SECONDLY, ALL the income which after the death of the said M. and thenceforth during the life of the mortgagor, if he shall survive her, shall arise from the monies, stocks, funds, shares, and securities now or at any time hereafter constituting or representing the funds by the said indenture of settlement settled by or on behalf of the said M. [wife's fund]; AND THIRDLY, all those policies of assurance on the life of the mortgagor, the particulars whereof are specified in the third schedule hereto, and all monies assured or to become payable by or under the said policies respectively, and the full benefit thereof respectively: TO HOLD the premises unto the mortgagees, their executors, administrators, and assigns. [*Proviso for redemption as at* pp. 287, 288, *supra, omitting the reference to the demised property; covenant for payment of principal and interest, and of interest after default,* pp. 251, 252, *supra; covenants by mortgagor to keep up the policies, substituting* "policies" for "policy," *and adding where necessary,* "or any of them," *and substituting for* "new policy" *the words* "new policy or policies," *supra,* pp. 288, 289. *Power to surrender policies* (*similarly*

Agreement for loan.

Witnesseth.

Assignment of life interest:

—and policies.

Habendum.

varied), p. 285]: PROVIDED ALWAYS, and it is hereby agreed and declared, that all the said premises hereinbefore assigned, and all other property which shall become subject to the present security, including every or any renewed or substituted policy to be effected as hereinbefore provided, shall in addition to all costs, charges, and expenses payable to or to be retained by the mortgagees under the provisions of the Conveyancing and Law of Property Act, 1881, be subject and liable to all other costs, charges, and expenses as between solicitor and client which may be sustained or incurred by the mortgagees in relation to this security, or for the purpose of realising or enforcing the same, including all costs, charges, and expenses of placing, removing, renewing, or replacing any distringas notices, or stop or restraining or charging orders; AND that all costs, charges, and expenses payable to or to be retained by the mortgagees, either under the provisions of the said Act or these presents, shall carry interest at the rate of £—— per cent. per annum from the time or respective times of the same respectively being sustained or incurred, such interest to be calculated with rests taken half-yearly on the days aforesaid: AND the said premises hereinbefore assigned, and any other property which shall become subject to this security, shall not be redeemed or redeemable until payment and satisfaction as well of the said last-mentioned costs, charges, and expenses, and interest and compound interest for the same, as of the said principal sum of £—— and the interest thereon and of all other monies which shall become due upon the security of these presents [*mortgagees' indemnity clause*, p. 252; *interpretation clause*, pp. 252—254]. IN WITNESS, &c. (*a*).

Declaration as to costs of mortgagees.

THE FIRST SCHEDULE above referred to.

THE SECOND SCHEDULE above referred to.

THE THIRD SCHEDULE above referred to.

(*a*) Notices of the charge should be given to each of the trustees of the settlement, and to the offices granting the various policies

LXV.

PRECEDENT LXV.

OF REVERSIONARY INTEREST IN FUNDS IN COURT.

MORTGAGE *of* REVERSIONARY INTEREST *in Funds in Court.* PROVISION *for payment of* COMPOUND INTEREST.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. [*mortgagor*] (hereinafter called the mortgagor), of the one part; and C. D., of, &c., E. F., of, &c., and G. H., of, &c. [*mortgagees*] (hereinafter called the mortgagees), of the other part: WHEREAS under the will, dated the —— day of ——, and proved in the Principal Registry of Probate on the —— day of ——, of M. B., late of ——, in the county of ——, deceased, the mortgagor, as one of the —— children of the said M. B., living at his death, is entitled in reversion expectant on the death of his mother P. B., and subject to her life interest under the trusts of the said will, to one equal —— share in the residuary estate of the said M. B., and the monies, stocks, funds, and securities for the time being constituting or representing the same, and the mortgagor will or may in the event of the death of any of his brothers under the age of twenty-one years, or of any of his sisters under that age and without having been married, be or become entitled to some further or other share or shares therein: AND WHEREAS the residuary estate of the said M. B. now consists of or is represented by the following particulars,

Parties.

Recitals.

Title of mortgagor to absolute and contingent shares in the residuary estate of his father.

Present state of investment of the property mortgaged.

charged. See *Re Wyatt*, [1892] 1 Ch. 188; affirmed in D. P., sub n. *Ward* v. *Duncombe*, [1893] A. C. 369; *Re Wasdale*, [1899] 1 Ch. 163; *Lloyd's Bank* v. *Pearson*, [1901] 1 Ch. 865; and *Re Phillips' Trusts*, [1903] 1 Ch. 183; *Re Dallas*, [1904] 2 Ch. 385. It is usual, before advancing money on such a mortgage, to inquire of the trustees of the fund whether they have received notice of any and what incumbrances. Query, however, whether such an inquiry need be answered, and whether any answer given can be relied on (*Low* v. *Bouverie*, [1891] 3 Ch. 82; *Re Tillott*, [1892] 1 Ch. 86; *Elkington & Co.* v. *Hürter*, [1892] 2 Ch. 452; *Re Dartnall*, [1895] 1 Ch. 474), and whether the mortgagor must not be required himself to make a statutory declaration on the subject.

PRECEDENT LXV.

OF REVERSIONARY INTEREST IN FUNDS IN COURT.

that is to say (1) the sum of Two-and-a-half per Cent. Consolidated Stock, specified in the first part of the schedule hereto, and standing in the name of the Paymaster-General to the credit of an action, *Re* B., B. *v.* X., 19—, B. 200 (being an action for the administration of the estate of the said M. B.) "the account of the residue," and (2) the mortgage debts specified in the second part of the same schedule, and vested, with the securities for the same, in X. and Y. as the present trustees of the said will: AND WHEREAS the mortgagees have agreed to lend to the mortgagor the sum of £——, upon having the repayment thereof, with interest for the same at the rate hereinafter mentioned, secured in manner hereinafter appearing: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of £—— this day paid to the mortgagor by the mortgagees (the receipt whereof the mortgagor doth hereby acknowledge), HE the mortgagor as BENEFICIAL OWNER doth hereby assign unto the mortgagees, ALL THAT one equal —— share to which the mortgagor is entitled as aforesaid, and every or any further or other share to which he may be or become entitled in the said stock and mortgage debts now constituting or representing the residuary estate of the said M. B., and in all other (if any) monies, stocks, funds and securities, constituting or representing, or which at any time or times hereafter may constitute or represent the same; TO HOLD the premises unto the mortgagees subject to the aforesaid life interest of the said P. B. under the trusts of the said will [*Proviso for redemption, supra*, p. 287, *omitting the reference to a surrender. Covenant for payment of principal and interest, and of interest after default*, pp. 251, 252]. AND FURTHER that all the interest which shall during the continuance of this security accrue

Agreement for loan.

Witnesseth.

Consideration.

Receipt.

Assignment of reversionary share.

Habendum.

Covenant by mortgagor that interest in arrear shall be capitalised (*a*).

(*a*) As to the operation of this provision where the mortgagee has entered into possession, see *Wrigley* v. *Gill*, [1906] 1 Ch. 165.

PRECEDENT LXV.

OF REVERSIONARY INTEREST IN FUNDS IN COURT.

due on the said sum of £——, and all interest which shall accrue due on that interest or upon any other interest which shall be capitalised under this present clause, shall, in case the same shall not be paid within twenty-one days from the respective times of the same becoming due, become principal, and be added to the said principal sum of £—— as or in the nature of a further advance, and shall carry interest at the rate of £—— per cent. per annum, to be computed from the respective times of such interest accruing due, and such interest shall be considered to accrue and shall be payable from time to time on the days hereinbefore appointed for the payment of interest on the said original sum of £——, so that by the addition and capitalisation of the interest as aforesaid the total principal money hereby secured may be augmented upon the footing of an accumulation at compound interest computed at the rate of £—— per cent. per annum, with rests taken half-yearly on the days hereinbefore mentioned, and that all additions to the said principal sum of £—— by means of capitalised interest, shall be charged on the said mortgaged premises, and shall to all intents and purposes be within the scope and operation of this security, but so that this provision shall not be deemed to authorise the mortgagor to allow any interest to fall into arrear unless permitted so to do by the mortgagees, and that the mortgagor will, after the same shall be due, upon demand pay to the mortgagees any interest which shall be capitalised hereunder, and any interest which shall accrue thereon. [*Mortgagees' indemnity clause, supra*, p. 252; *interpretation clause*, pp. 252—254] (*a*). IN WITNESS, &c.

THE SCHEDULE above referred to.

Part I. Part II.

(*a*) Notice of the security must be given to the trustees, and a stop order obtained (see as to the latter, *Re Eyton*, 45 Ch. D. 458; *Mack* v. *Postle*, [1894] 2 Ch. 449; *Stephens* v. *Green*, [1895] 2 Ch.

LXVI.

PRECEDENT LXVI.

OF REVERSIONARY INTEREST IN SETTLED FUNDS AND POLICIES TO AN ASSURANCE SOCIETY.

MORTGAGE *to an* ASSURANCE SOCIETY *of a* REVERSIONARY INTEREST *in* SETTLED PERSONAL ESTATE *and* POLICIES. *Provision for the* CONTINUANCE *of the* LOAN *until the fund falls into possession or the death of the Mortgagor, the* INTEREST *to be* ACCUMULATED.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. [*mortgagor*] (hereinafter called the mortgagor), of the one part, and The —— Assurance Society, whose registered office is at —— [*mortgagee*] (hereinafter called the

Parties.

148; *Bath* v. *Bath*, [1901] 1 Ch. 460; *Montefiore* v. *Guedalla*, [1903] 2 Ch. 26). The following is a form of power (which should be inserted before the interpretation clause) to apply for a stop order, and use the name of the mortgagor:—

"And the mortgagor doth hereby empower the mortgagees, at the cost of the mortgagor, to apply for and obtain an order in the said action, prohibiting the transfer or payment of the capital [or income] of the said premises hereinbefore assigned without notice to the mortgagees, and upon such application to use the name of the mortgagor as a party concurring therein, or consenting thereto, and to instruct solicitors and counsel accordingly on behalf of the mortgagor."

Power to apply for stop order.

It would seem that the period of limitation in respect of the covenant in this instrument is twenty years, though it would be otherwise if the property consisted of land devised in trust for sale (*Kirkland* v. *Peatfield*, [1903] 1 K. B. 756; *Re Hazeldine's Trusts*, [1908] 1 Ch. 34). And, though the debt should become barred, the remedy by foreclosure or sale against the mortgaged property will remain (*London and Midland Bank* v. *Mitchell*, [1899] 2 Ch. 161; *Re Lloyd*, [1903] 1 Ch. 385; but see also *Re Hazeldine's Trusts*, *ubi supra*). Time will begin to run for the purpose of barring such an action only from the day when the interest falls into possession (*Hugill* v. *Wilkinson*, 38 Ch. D. 480).

PRECEDENT LXVI.

OF REVERSIONARY INTEREST IN SETTLED FUNDS AND POLICIES TO AN ASSURANCE SOCIETY.

Society), of the other part. WHEREAS under an indenture dated, &c., and expressed to be made between [*parties*] (being a settlement made in consideration of the marriage shortly afterwards solemnized between —— and C. B.), and in the events which have happened, the mortgagor, as the only child of the said marriage, is absolutely entitled in reversion expectant on the death of his mother the said C. B., and subject to her life interest thereunder, to the entirety of the funds subject to the trusts of the same indenture and the income thereof: AND WHEREAS the trust funds subject to the trusts of the said indenture of settlement now consist of the stocks specified in the first schedule hereto and standing in the names of —— and —— as the present trustees of the same indenture: AND WHEREAS the mortgagor is possessed of the policies of assurance on his life described in the second schedule hereto: AND WHEREAS the Society has agreed to lend to the mortgagor the sum of £—— upon having the repayment thereof with interest at the rate of £— per cent. per annum secured in manner hereinafter appearing, it having been also agreed that the said loan shall be continued and the interest thereon forborne during the period and in manner hereinafter appearing: NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreements, and in consideration of £—— now paid to the mortgagor by the Society (the receipt whereof the mortgagor doth hereby acknowledge), HE the mortgagor AS BENEFICIAL OWNER doth hereby assign unto the Society ALL AND SINGULAR the stocks specified in the first schedule hereto, and the monies, stocks, funds, and securities into or for which the same or any of them may be converted or transposed or which shall otherwise constitute or represent the trust funds subject to the trusts of the said indenture of settlement: TO HOLD the premises UNTO the

Recitals.

Title of mortgagor to reversionary interest.

Present state of investment.

Title to policies (*a*).

Agreement for loan.

Witnesseth.

Consideration.

Receipt.

Assignment of reversionary interest.

Habendum.

(*a*) It is assumed that these are policies granted by the society. See *supra*, p. 285, n. (*a*).

PRECEDENT LXVI.

OF REVERSIONARY INTEREST IN SETTLED FUNDS AND POLICIES TO AN ASSURANCE SOCIETY.

Society subject to the aforesaid life interest therein of the said C. B. under the trusts of the said indenture of settlement. [*Proviso for redemption, supra*, p. 287, *omitting the reference to a surrender.*] AND the mortgagor AS BENEFICIAL OWNER doth hereby covenant with the Society that he the mortgagor will at any time whilst any monies shall be owing upon the security of these presents upon the request of the Society but at his own cost in all respects assign the policies of assurance described in the second schedule hereto and all monies assured or to become payable by or under the same respectively, unto the Society or such person or persons as they shall direct subject to such right or equity of redemption as would have been subsisting therein in case the same had been assigned unto or in trust for the Society subject to the proviso for redemption hereinbefore contained: AND that in the meantime and until the said policies and monies shall be so assigned the same shall stand and be charged with the payment to the Society of the said sum of £—— and interest: AND the mortgagor doth hereby irrevocably appoint —— and —— (*a*) and each of them to be the attorneys and attorney of the mortgagor, in his name and on his behalf and as his act and deed to sign, seal, and deliver and otherwise perfect every or any deed of assignment of the said policies or any of them and of the monies assured or to become payable by or under the same respectively which may be desired by the Society in order to vest the same in them or in any person or persons in trust for them subject as aforesaid or in a purchaser from the Society. [*Covenant for payment of principal and interest, and of interest after default*, pp. 251, 252, *supra.*] PROVIDED ALWAYS that the Society shall not during the joint lives of the mortgagor and the said C. B. call in the said sum of £ —— or any part thereof: PROVIDED ALSO that the mortgagor shall not during the joint

Covenant to assign policies;

—and charge of policies.

Power of attorney to assign policies.

Provisoes for continuance of loan;

(*a*) The attorneys need not be made parties.

PRECEDENT LXVI.

OF REVERSIONARY INTEREST IN SETTLED FUNDS AND POLICIES TO AN ASSURANCE SOCIETY.

lives of himself and the said C. B. be entitled to pay off the said sum of £—— or any part thereof. AND IT IS HEREBY DECLARED that all the interest which shall accrue due on the said sum of £—— during the joint lives of the mortgagor and the said C. B. and all interest which shall accrue due on that interest or upon any other interest which shall be capitalised under this present clause shall be forborne and become principal and be added to the principal sum of £—— as or in the nature of a further advance, and shall carry interest at the rate of £— per cent. per annum to be computed [*continue the clause at* p. 298 *down to* "this security," *and proceeding*] AND the mortgagor doth hereby covenant with the Society that he the mortgagor will after the death of such one of them the mortgagor and the said C. B. as shall first die upon demand pay to the Society any interest which shall be capitalised hereunder and any interest which shall accrue thereon. [*Covenant by the mortgagor to keep up the policies*, pp. 288, 289, *referring to them as* "the policies hereinbefore covenanted to be assigned," *and adding where appropriate*, "or any of them," *and substituting for* "new policy" *the words* "new policy or policies," *and adding also after* "expended or incurred" *the words* "such interest whilst remaining unpaid to be capitalised in the same manner in all respects as if the same had been interest accruing on the said principal sum of £—— with rests taken half-yearly on the days aforesaid." *Power to surrender policies* (*similarly varied*), p. 285; *Declaration as to costs of mortgagees*, *supra*, p. 295; *Mortgagees' indemnity clause*, *supra*, p. 252; *Interpretation clause*, p. 240, *the expression* "the Society" *being defined as including their successors and assigns*.] IN WITNESS, &c. (*a*).

—and for capitalisation of interest.

THE FIRST SCHEDULE above referred to.

THE SECOND SCHEDULE above referred to.

(*a*) Notice of the assignment should be given to the trustees of the settlement, and notice of the charge on the policies entered in the books of the society.

LXVII.

FURTHER CHARGE *by* SUPPLEMENTAL DEED *upon a* LIFE INTEREST *in settled* PERSONAL ESTATE *and a* POLICY, *a* FRESH POLICY *being* ADDED *to the security*.

PRECEDENT LXVII.

FURTHER CHARGE ON LIFE INTEREST IN SETTLED PERSONAL ESTATE AND POLICY.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*mortgagor*] (hereinafter called the mortgagor), of the one part, and B., of, &c. [*mortgagee*] (hereinafter called the mortgagee), of the other part. WHEREAS these presents are supplemental to an indenture (hereinafter referred to as the principal indenture) dated the —— day of ——, 19—, and expressed to be made between the mortgagor of the one part and the mortgagee of the other part, and being a mortgage of the life interest of the mortgagor in the residuary estate of C. D., deceased, and a policy of assurance on his own life to secure £—— and interest: AND WHEREAS the said sum of £—— with current interest thereon remains owing to the mortgagee upon the security of the principal indenture: AND WHEREAS the mortgagor is possessed of the policy of assurance on his own life, hereinafter assigned: AND WHEREAS the mortgagee has agreed to lend to the mortgagor the further sum of £—— upon having the repayment thereof with interest at the rate hereinafter mentioned secured, and the payment of the said sum of £—— [*the old debt*] and the interest thereon respectively further secured in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of £——, now paid by the mortgagee to the mortgagor (the receipt whereof the mortgagor doth hereby acknowledge) and of the said sum of £—— [*the old debt*] being owing as aforesaid, HE the mortgagor as BENEFICIAL OWNER doth hereby assign unto the mortgagee [*assignment of the fresh policy*, p. 231, *supra*], TO HOLD the premises unto the mortgagee, subject to such right

Recitals.

That deed is supplemental to prior mortgage.

State of mortgage debt.

That mortgagor is entitled to fresh policy.

Of agreement for the further advance.

Witnesseth.

Assignment of fresh policy.

Habendum.

PRECEDENT LXVII.

FURTHER CHARGE ON LIFE INTEREST IN SETTLED PERSONAL ESTATE AND POLICY.

or equity of redemption as immediately after the execution of these presents by the mortgagor will by virtue of the principal indenture and these presents be subsisting in and with respect to the premises comprised in and assigned by the principal indenture [*covenant by the mortgagor for payment of the new debt on the next half-yearly day appointed by the principal indenture for payment of interest and of subsequent interest*, pp. 321, 322, *and notes*]. AND IT IS HEREBY AGREED AND DECLARED, that all the premises comprised in and assigned by the principal indenture, and also any new policy or policies which may be effected according to the covenant in that behalf contained in the principal indenture, and the monies to become payable thereunder, shall be charged with the payment, and shall not be redeemable but upon payment by the mortgagor to the mortgagee of as well the said sum of £—— [*the new debt*] and interest for the same according to the covenant in that behalf hereinbefore contained as the said sum of £ —— [*the old debt*] and the interest due and to become due for the same. AND FURTHER that all the covenants, powers and provisions contained in the principal indenture with reference to the policy thereby mortgaged or any substituted policy or policies, or to any monies which may be received under or by virtue of the same, and also the other powers and provisions therein contained for securing payment of the said sum of £—— [*the old debt*] and the interest thereon, and in relation to the security created by the principal indenture shall respectively extend and be applicable to the said policy hereby assigned and any substituted policy or policies and any monies which may be received under or by virtue of the same and otherwise so as to be a security for the said sum of £—— [*the new debt*] and the interest thereon as well as the sum of £—— [*the old debt*] and the interest thereon, and for all other principal monies and interest intended to be secured by these presents and the principal indenture (including par-

Covenants for payment of principal and interest.

Agreement that property comprised in the original mortgage shall be charged with the further advance.

And that the provisions in the mortgage shall extend to the fresh policy.

ticularly monies expended in keeping up or restoring any of the said policies and the interest thereon), and generally in the same manner as if the said policy hereby assigned had been comprised in and assigned by the principal indenture, and the security created by the principal indenture had been for the entire principal monies and interest intended to be secured by these presents and the principal indenture, and all necessary or proper alterations had been made in the said covenants, powers and provisions contained in the principal indenture, regard being had to the addition of the said policy hereby assigned and to the change in the amount of the principal monies intended to be secured. [*Interpretation clause, supra*, p. 240.] IN WITNESS, &c. (*a*).

PRECEDENT LXVII.

FURTHER CHARGE ON LIFE INTEREST IN SETTLED PERSONAL ESTATE AND POLICY.

LXVIII.

MORTGAGE *in fee* SUBJECT *to* PRIOR CHARGES, *a* SURETY JOINING.

PRECEDENT LXVIII.

IN FEE SUBJECT TO PRIOR CHARGES.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*mortgagor*] (hereinafter called the mortgagor), of the first part, B., of, &c. [*surety*], of the second part, and C., of, &c. [*mortgagee*] (hereinafter called the mortgagee), of the third part. WHEREAS the mortgagor is seised of the hereditaments hereinafter granted for an estate of inheritance in fee simple subject to the mortgages hereinafter mentioned [*recital of agreement for loan by C. to A., supra*, p. 273]. AND WHEREAS the said B. has agreed to join in these presents as surety for the mortgagor in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH, that in consideration of £—— this day paid by the mortgagee to the mortgagor with the privity and approbation (hereby testified) of the said B. (the receipt

Parties.

Witnesseth.

Consideration.

Receipt.

(*a*) Notice of the deed should be given to the trustees of the will and to the insurance office or offices.

PRECEDENT LXVIII.

IN FEE SUBJECT TO PRIOR CHARGES.

whereof the mortgagor doth hereby acknowledge), HE the mortgagor AS BENEFICIAL OWNER doth hereby grant unto the mortgagee, his heirs and assigns [*parcels, supra*, p. 134, &c.], TO HOLD the premises UNTO and TO THE USE of the mortgagee, his heirs and assigns, SUBJECT to a mortgage thereof made by an indenture, dated the —— day of ——, and expressed to be made between [*parties*], for securing the sum of £—— and interest, AND ALSO to a mortgage thereof made by an indenture, dated the —— day of ——, and expressed to be made between [*parties*], for securing the sum of £—— and interest [*proviso for redemption, supra*, p. 245, *adding*, "subject to the mortgages aforesaid, if and so far as then subsisting"]. AND the mortgagor and the said B. do, and as separate covenants also each of them doth, hereby covenant with the mortgagee that the mortgagor and the said B., or one of them, their or one of their heirs, executors, or administrators, will pay to the mortgagee on the said —— day of —— next [*remainder of covenant for payment of principal and interest, and of interest after default, supra*, pp. 245, 246. *Covenant against registration, supra*, p. 246. *Mortgagee's indemnity clause, supra*, p. 246]. PROVIDED ALWAYS, and it is hereby declared, that although as between the mortgagor and the said B. the said B. is only a surety for the mortgagor, yet as between the said B. and the mortgagee, the said B. is to be considered as a principal debtor for the said principal monies and interest hereby secured, so that the said B., his heirs, executors, or administrators, shall not be released by time being given to the mortgagor, or by any other act or omission of the mortgagee, or matter or thing whatsoever whereby the said B., his heirs, executors, or administrators, as a surety or sureties only would be so released. [*Interpretation clause, supra*, p. 240 (*a*).] IN WITNESS, &c.

Grant.

Habendum.

Subject to prior mortgages.

Covenant by mortgagor and surety for payment.

Surety to be liable as principal.

THE SCHEDULE above referred to.

(*a*) The statutory power of sale seems sufficiently to meet the case of a mortgage subject to prior charges. But see Precedent LI.,

LXIX.

MORTGAGE *of* FREEHOLDS. A PRIOR MORTGAGEE *joining to* POSTPONE *his security*.

PRECEDENT LXIX.

IN FEE A PRIOR MORTGAGEE JOINING TO POSTPONE HIS SECURITY.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*mortgagor*] (hereinafter called the mortgagor), of the first part, B., of, &c. [*prior mortgagee*], of the second part, and C., of, &c. [*mortgagee*] (hereinafter called the mortgagee), of the third part: WHEREAS, &c. [*recite the prior mortgage, see* p. 146, *supra*]: AND WHEREAS the said sum of £——, with current interest thereon is owing to the said B., on the security of the said indenture of mortgage: AND WHEREAS the mortgagee has agreed to lend to the mortgagor the sum of £—— upon having the repayment thereof with interest for the same at the rate hereinafter mentioned, secured in manner hereinafter appearing: AND WHEREAS the said B., at the request of the mortgagor, has agreed to join in these presents for the purpose of postponing his aforesaid security to the security intended to be hereby made. Now THIS INDENTURE WITNESSETH, that in pursuance of the said agreements and in consideration of £—— now paid to the mortgagor by the mortgagee (the receipt whereof the mortgagor doth hereby acknowledge), the said B. AS MORTGAGEE doth hereby at the request of the mortgagor grant and release, and the mortgagor AS BENEFICIAL OWNER doth hereby grant and confirm unto the mortgagee, his heirs and assigns [*parcels, supra*, pp. 134, 138, &c.], TO HOLD the premises UNTO and TO THE USE of the mortgagee, his heirs and assigns, freed and discharged from the said sum of £—— [*the debt owing to*

Recital of prior mortgage.

Of state of prior debt.

Agreement for loan.

That prior mortgagee has agreed to join.

Witnesseth.

Consideration.

Receipt.

Release and grant.

Habendum.

supra. As to the equitable right of a surety to compel the principal debtor to relieve him from liability by discharging the debt, see *Ascherson* v. *Tredegar, &c. Co., Ltd.*, [1909] 2 Ch. 401.

PRECEDENT LXIX.

IN FEE A PRIOR MORTGAGEE JOINING TO POSTPONE HIS SECURITY.

B.] and the interest due and to grow due thereon and from all claims and demands under the said indenture of the —— day of ——. [*Proviso for redemption, supra*, p. 245, *the reconveyance to be* "to the use of the said B. his heirs and assigns, or as he or they shall direct, subject to such right or equity of redemption as would for the time being have been subsisting therein by virtue of the said indenture of the —— day of —— if these presents had not been made, and so as to restore the security by the same indenture created for the said sum of £—— and interest, with all the powers and authorities incidental thereto." *Covenant for payment of principal and interest and of interest after default, supra*, pp. 245, 246.] PROVIDED ALWAYS and it is hereby agreed and declared that it shall be lawful for the mortgagee upon a sale of the said premises under the statutory power in that behalf to pay any surplus which shall remain after satisfaction of the security hereby made to the said B., his executors, administrators, or assigns, whose receipt shall be a sufficient discharge for the same (*a*). [*Covenant against registration, supra*, p. 246; *mortgagee's indemnity clause, supra*, p. 246; *interpretation clause, supra*, p. 240.] IN WITNESS, &c.

Proviso for redemption.

Covenant for payment of principal and interest.

Agreement as to surplus proceeds of sale.

THE SCHEDULE above referred to.

LXX.

PRECEDENT LXX.

OF FEE SIMPLE AND SETTLED LANDS.

MORTGAGE *of* FEE SIMPLE *Lands, and of Lands in* SETTLEMENT *subject to a* POWER *of* APPOINTMENT—PROVISO *as to the* ORDER *of* LIABILITY *between the Mortgagors and the Estates.*

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. [*one of the mortgagors*], of the first part; C. B., of,

(*a*) A clause to this effect is sometimes inserted, but is considered to be unnecessary. See *Re Walhampton Estate*, 26 Ch. D. 391; *West London, &c. Bank* v. *Reliance, &c. Society*, 29 Ch. D. 954.

PRECEDENT LXX.

OF FEE SIMPLE AND SETTLED LANDS.

&c. [*the other mortgagor*], of the second part; and D. E., of, &c., and F. G., of, &c. [*mortgagees*] (hereinafter called the mortgagees), of the third part: WHEREAS, by an indenture dated, &c., and expressed to be made between [*parties*] (being a settlement made in consideration of the marriage then intended and shortly after solemnized between the said C. B. and M. B.), the hereditaments hereinafter appointed were limited, from and after the solemnization of the said then intended marriage, to the use of such person or persons, for such estate and estates, and in such manner, as the said A. B. and C. B. during their joint lives, by any deed or deeds, should appoint, and in default of and subject to such appointment, to uses upon trusts and with and subject to powers and provisions therein expressed: AND WHEREAS the said A. B. is seised of the hereditaments hereinafter granted for an estate in fee simple in possession, free from incumbrances: AND WHEREAS the mortgagees have agreed to lend to the said A. B. and C. B. the sum of £——, upon having the repayment of the same, with interest as hereinafter mentioned, secured in manner hereinafter appearing: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of £—— now paid to the said A. B. and C. B. by the mortgagees out of monies belonging to them on a joint account (the receipt whereof the said A. B. and C. B. do hereby acknowledge), the said A. B. and C. B. AS BENEFICIAL OWNERS in exercise of the aforesaid power to them for this purpose given by the said indenture of settlement, and of every other power enabling them, do hereby appoint that ALL THOSE manors, messuages, farms, lands, and hereditaments described in the first schedule hereto, and all other (if any) the hereditaments which by the said indenture of settlement were subjected to the joint appointment of the said A. B. and C. B. as aforesaid, shall henceforth remain and be TO THE USE of the mortgagees, their heirs and assigns. AND THIS INDENTURE ALSO WITNESSETH,

Recital of settlement of part of the lands to be mortgaged;

—of one of the mortgagors being seised in fee of the other lands;

—of agreement for loan.

Witnesseth.

Appointment of the settled lands.

Witnesseth also.

PRECEDENT LXX.

OF FEE SIMPLE AND SETTLED LANDS.

Conveyance of the fee simple lands.

Habendum.

Proviso for redemption.

that, in further pursuance of the said agreement, and for the consideration aforesaid, the said A. B., as BENEFICIAL OWNER doth hereby grant unto the mortgagees, their heirs and assigns, ALL THOSE manors, messuages, farms, lands, and hereditaments described in the second schedule hereto: To HOLD the premises hereinbefore granted, UNTO and TO THE USE of the mortgagees, their heirs and assigns. PROVIDED ALWAYS, that, if the said A. B. and C. B. or either of them, or their appointees, or their or either of their heirs, executors, administrators, or assigns, or any other person interested in the equity of redemption of any of the said premises, on the —— day of —— next shall pay to the mortgagees the sum of £——, with interest for the same in the meantime at the rate of —— per cent. per annum, then the mortgagees shall at any time thereafter, upon the request and at the cost of any such person, reconvey the said premises hereinbefore appointed, to the uses upon the trusts and with and subject to the powers and provisions to, upon, and with and subject to which the equity of redemption of the same premises shall for the time being stand limited and settled (*a*), and reconvey the said premises hereinbefore granted, to the use of the said A. B., his heirs and assigns, or as he or they shall direct. [*Joint and several covenants by A. B. and C. B. for payment of principal and interest and of interest after default*, see pp. 251, 275, 306, *supra*.]

Special trusts of surplus monies arising from sales under the statutory power.

AND by way of variation of the provisions of the Conveyancing and Law of Property Act, 1881, as to the power of sale thereby given to mortgagees, IT IS HEREBY DECLARED, that the mortgagees shall pay such residue or surplus, if any, of the monies arising from a sale under the aforesaid power of the said premises hereinbefore appointed or any part thereof as under the aforesaid pro-

(*a*) See as to the importance of properly framing the proviso for redemption in a mortgage of settled property, *Plomley* v. *Felton*, 14 App. Cas. 61.

visions would be payable to the person entitled to the mortgaged property or authorised to give receipts for the proceeds of sale thereof unto the trustees for purposes of the Settled Land Acts, 1882 to 1890, of the aforesaid settlement (whose receipt shall be a sufficient discharge for the same) to be held and applied upon and for the trusts and purposes which would have been applicable thereto in case the same had been capital money arising under the said indenture of settlement and liable by virtue thereof to be invested primarily in the purchase of freehold hereditaments to be settled to the uses thereby limited concerning the said premises hereinbefore appointed, or as near thereto as the death of parties and other intervening circumstances shall admit. PROVIDED ALWAYS, and it is hereby agreed and declared between and by the said A. B. and C. B., that, as between the said A. B., his heirs, executors, and administrators, and the said C. B., his heirs, executors, and administrators, the said A. B., his heirs, executors, and administrators, shall be primarily liable to the payment of the said sum of £—— and interest; and that, as between the said A. B., his heirs, executors, and administrators, and the person or persons for the time being entitled to the equity of redemption of the said mortgaged premises, the said mortgaged premises shall be the primary fund for the payment of the said sum of £—— and interest; and that as between the said premises hereinbefore granted, and the said premises hereinbefore appointed, the said premises hereinbefore granted shall be the primary fund for the payment of the said sum of £—— and interest: PROVIDED ALWAYS that the provision hereinbefore contained with respect to the primary liability to the payment of the said sum of £—— and interest shall not affect the mortgagees or preclude them from resorting to the said A. B., his heirs, executors, or administrators, and the said C. B., his heirs, executors, or administrators, or any of them, and to the said mortgaged premises or any of them,

Agreement of the mortgagors as to the order of liability of themselves and the estates.

Mortgagees not to be affected by preceding agreement.

PRECEDENT LXX.

OF FEE SIMPLE AND SETTLED LANDS.

at the same time or in such order and manner as they shall think fit [*covenant against registration, supra*, p. 246; *mortgagees' indemnity clause, supra*, p. 252]. PROVIDED ALWAYS that unless such an interpretation is inconsistent with the context the expression the mortgagees [*remainder of interpretation clause, supra*, p. 254]. IN WITNESS, &c.

THE FIRST SCHEDULE above referred to.

THE SECOND SCHEDULE above referred to.

LXXI.

PRECEDENT LXXI.

IN FEE TO ACCOMPANY REGISTERED TRANSFER OR CHARGE.

MORTGAGE *in* FEE *to one* MORTGAGEE *of* FREEHOLD *to accompany a* REGISTERED TRANSFER *or* CHARGE (*a*).

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*mortgagor*] (hereinafter called the mortgagor), of the one part, and B., of, &c. [*mortgagee*] (hereinafter called the mortgagee), of the other part.

Parties.

Recitals.

WHEREAS the mortgagor is seised of the hereditaments hereinafter granted in fee simple in possession, free from incumbrances, and is registered under the Land Transfer Acts, 1875 and 1897, as the proprietor thereof with a possessory [absolute] title in the district of —— and parish of —— under the number ——. AND WHEREAS the mortgagee has agreed to lend to the mortgagor the sum of £—— upon having the repayment of the same with interest as hereinafter mentioned secured in manner hereinafter appearing. AND WHEREAS, in pursuance of the said agreement, the mortgagor has executed and delivered to the mortgagee an instrument of transfer in the prescribed form of the land

(*a*) See pp. 97—99, *supra*. It is considered, on the whole, the preferable course to take a registered transfer rather than a registered charge, and it is believed that this is now the common practice.

PRECEDENT LXXI.

IN FEE TO ACCOMPANY REGISTERED TRANSFER OR CHARGE.

registered under the said title which is intended to be registered forthwith [an instrument of charge in the prescribed form and intended to be registered forthwith, charging the land registered under the said title with the payment to the mortgagee of the said sum of £——, with interest thereon at the rate hereinafter mentioned, and has handed the land certificate of the said title to the mortgagee (*a*), and has applied for a restriction in the form in the schedule hereto against the said title]. NOW THIS INDENTURE WITNESSETH, that in further pursuance of the said agreement, and in consideration of the sum of £—— now paid to the mortgagor by the mortgagee (the receipt whereof the mortgagor doth hereby acknowledge), he the mortgagor, AS BENEFICIAL OWNER, doth hereby grant unto the mortgagee, his heirs and assigns [*parcels*, pp. 134, 138, &c., *adding*, being the land registered under the title aforesaid, and so that the description contained in the said title shall not restrict the general description hereinbefore contained], TO HOLD the premises unto and to the use of the mortgagee, his heirs and assigns. PROVIDED ALWAYS, that if the mortgagor shall pay to the mortgagee on the —— day of —— next the sum of £——, with interest for the same in the meantime at the rate of £—— per cent. per annum, then the mortgagee will at any time thereafter, upon the request and at the cost of the mortgagor, reconvey the said premises unto the mortgagor, his heirs or assigns, and execute and deliver to the mortgagor, his heirs or assigns, an instrument of transfer thereof in the prescribed form, and deliver to him or them the land certificate [an instrument of discharge of the said charge in the prescribed form, and an application to withdraw any restriction and notice of deposit of the land certificate entered on the register, and deliver to him

Witnesseth.

Grant.

Parcels.

Proviso for redemption.

(*a*) Notice of the charge created by the deposit of this certificate may be entered at the office of Land Registry if thought fit. Where the mortgage is of leaseholds by demise, notice of the lease should also be entered at the office.

PRECEDENT LXXI.

IN FEE TO ACCOMPANY REGISTERED TRANSFER OR CHARGE.

or them the certificate of charge] [*covenant for payment of principal and interest, and of interest after default, supra*, pp. 245, 246; *and any other covenants and provisions stipulated for—e.g., a covenant for repair and insurance of buildings, supra*, p. 263 (*a*); *mortgagee's indemnity clause, supra*, p. 246; *interpretation clause, supra*, p. 240]. IN WITNESS, &c.

THE SCHEDULE above referred to.

RESTRICTION.

Except under an order of the registrar no transfer by the proprietor of the land or in exercise of the power of sale in any charge subsequent to the registered charge No. 1, shall be registered without the consent of the registered proprietor for the time being of the last-mentioned charge.

LXXII.

PRECEDENT LXXII.

DEED ACCOMPANYING REGISTERED CHARGE.

CONTEMPORANEOUS DEED *to accompany a* REGISTERED CHARGE.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*mortgagor*] (hereinafter called the mortgagor), of the one part, and B., of, &c., C., of, &c., and D., of, &c. [*mortgagees*] (hereinafter called the mortgagees), of the other part: SUPPLEMENTAL to the charge No. —, for — pounds (£ —), secured on the freehold [*or* leasehold] land known as —, being [part of] the land comprised in the title No. —, in the parish [*or* extra parochial place] of —, in the district of — and county of —, WIT-

Parties.

Reference to charge.

Witnesseth.

(*a*) It is considered that, as a general rule, none of the stipulations under the heads A, B, and C, in Form 44 of the Rules of 1903, need be introduced into a charge ancillary to an unregistered mortgage, but that all the stipulations agreed upon may be safely and more conveniently inserted in the unregistered instrument.

NESSETH that in pursuance of an agreement in this behalf entered into upon the treaty for the said charge and in consideration of the premises, IT IS HEREBY agreed and declared as follows (that is to say):—

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DEED ACCOMPANYING REGISTERED CHARGE.

Agreement and declaration.

1. [*Here introduce in separate numbered paragraphs such covenants, clauses, and provisions not implied or inserted in the charge as may be suitable to the circumstances, referring to the money as* "secured by the said charge." *and to the land charged as* "the land comprised in the said charge," *and otherwise mutatis mutandis* (*a*)] IN WITNESS, &c.

LXXIII.

MORTGAGE *by* DEMISE *for* PART *of a* TERM *of Years for securing a* PORTION.

PRECEDENT LXXIII.

BY DEMISE TO SECURE PORTION.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., and C. D., of, &c. [*trustees of the term of years*], of the first part; E. F., of, &c. [*tenant for life*], of the second part; G. F., of, &c. [*portionist*], of the third part; and J. K., of, &c. [*mortgagee*] (hereinafter called the mortgagee), of the fourth part: WHEREAS L. F., late of ——, esquire, deceased, duly executed his will dated the —— day of ——, and thereby devised all his manors, messuages, lands, tenements, hereditaments, and real estate in the county of ——, to the use of the said A. B. and C. D., their executors, administrators, and assigns, for the term of 500 years, to be computed from his the said testator's decease, without impeachment of waste, upon the trusts thereinafter declared and in part hereinafter mentioned concerning the same, and from and after the determination of the said term of 500 years,

Parties.

Recital of will creating the term;

(*a*) See Precedent LXXI. and the notes thereto.

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BY DEMISE TO SECURE PORTION.

and in the meantime subject thereto and to the trusts thereof, to the use of his the said testator's eldest son, the said E. F., and his assigns for his life without impeachment of waste with remainders over in settlement; And the said testator thereby declared that the said premises were so devised to the said A. B. and C. D., for the said term of 500 years as aforesaid, upon trust (among other things) that if he the said testator should have any younger child or children, meaning thereby any child or children who should survive him, and being a son or sons attain the age of twenty-one years, or being a daughter or daughters attain that age or marry, other than any son or sons of his who, before attaining the age of twenty-one years, should become entitled in possession to the same premises for the first estate for life (*a*), then the said trustees or the survivor of them, or the executors or administrators of such survivor, should, by demise, assignment, mortgage, sale, or other disposition of the said premises, or of part thereof, for all or any part of the said term of 500 years, or by such other means as therein mentioned, levy and raise the sum of £5,000, for the portion of each younger child, and pay the same to him or her or to his or her legal personal representatives, and the said testator thereby appointed the said A. B. and C. D. executors thereof: AND WHEREAS the said L. F. died on the —— day of ——, and his said will was proved by the said A. B. and C. D. in the —— Registry of Probate on the —— day of ——: AND WHEREAS the said G. F. is one of the younger children of the said L. F., and has attained the age of twenty-one years: AND WHEREAS the said portion or sum of £5,000 to which the said G. F. as one of such younger children is entitled under the trusts of the said term as aforesaid is owing to him, but all interest thereon (*b*) has been

—of death of testator and probate of his will;

—that portion remains owing;

(*a*) This mode of defining the children to take is sometimes used; but the language of the will should be followed.

(*b*) Portions carry interest of their own nature.

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BY DEMISE TO SECURE PORTION.

paid down to the date of these presents, and he is desirous that the same shall be raised and paid to him: AND WHEREAS the legacy duty on the said sum of £5,000 has been paid by the said G. F. out of his own monies, and a proper receipt for the same has been taken (*a*): AND WHEREAS the mortgagee has at the request of the said A. B. and C. D. agreed to pay to the said G. F. the said sum of £5,000 upon having the repayment thereof with interest at the rate hereinafter mentioned, secured in manner hereinafter appearing, the said E. F. agreeing to enter into the covenant hereinafter contained for payment of the interest thereon: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreements, and in consideration of £5,000 this day paid to the said G. F. by the mortgagee at the request (hereby testified) of the said A. B. and C. D. (the receipt whereof the said G. F. doth hereby acknowledge, and the payment whereof to him the said A. B. and C. D. hereby admit), they the said A. B. and C. D. AS TRUSTEES do, and each of them doth, hereby grant and demise unto the mortgagee ALL THAT, &c. [*parcels*], all which said premises are part of the hereditaments by the said will of the said L. F. devised or limited to the said A. B. and C. D., their executors, administrators, and assigns, for the said term of 500 years as hereinbefore is mentioned, TO HOLD the premises unto the mortgagee for the term of 490 years, to commence from the day next before the date of these presents without impeachment of waste: PROVIDED ALWAYS, and it is hereby declared, that, if the said A. B. and C. D., their executors, administrators, or assigns, or the said E. F. or any other person or persons interested in the inheritance of the said premises in remainder expectant upon the determination of the said term of 500

—that the legacy duty has been paid:

—of agreement for payment by mortgagee and security.

Witnesseth.

Consideration.

Demise.

Parcels.

Habendum.

Proviso for cesser.

(*a*) It seems desirable to recite that the duty has been paid, and best to treat it as paid in this way, unless the trustees pay it out of other monies, in which case the mortgage would be for the balance.

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years, shall, on the —— day of —— next (*a*), pay to the mortgagee the said sum of £5,000, with interest for the same in the meantime at the rate of —— per cent. per annum, the said term of 490 years hereby created shall immediately thereupon cease and determine: PROVIDED ALSO, and it is hereby declared that for the purposes of the power of sale and other powers in these presents implied by statute, the said sum of £5,000 shall be deemed to become due on the said —— day of —— next: AND IT IS HEREBY FURTHER DECLARED that, if the said sum of £5,000, or any part thereof, shall remain unpaid after the said —— day of —— next, then, so long as the same sum or any part thereof shall remain unpaid, interest at the rate of £— per cent. per annum for the sum so remaining unpaid shall be paid to the mortgagee, by equal half-yearly payments on the —— day of —— and the —— day of ——; AND THE SAID E. F. doth hereby covenant with the mortgagee that the said E. F. will at all times during his life, if the aforesaid sum of £5,000 or any part thereof shall so long remain on the security of these presents, pay to the mortgagee, the interest for the said sum of £5,000, or for so much thereof as shall for the time being remain unpaid, at the rate of —— per cent. per annum, by equal half-yearly payments, on the —— day of —— and the —— day of —— (*b*). AND IT IS HEREBY DECLARED that the said sum of £5,000 hereby secured, and the interest for the same, shall not nor shall any part thereof respectively constitute a

Mortgage money deemed to become due in six months.

Interest to be paid half-yearly.

Covenant by tenant for life for payment of interest accruing during his life.

Trustees not to be personally liable.

(*a*) Six months from date.

(*b*) If a tenant for life or for any other limited estate should covenant for the payment of the principal as well as the interest, a proviso should be added (as at pp. 311, 312, *supra*, *mutatis mutandis*) throwing the debt primarily on the land in exoneration of the covenantor, but so as not to affect the rights of the mortgagee. An acknowledgment by the tenant for life for production of deeds may often be advantageously added. And where the land is registered, see sect. 6 (7) of the Land Transfer Act, 1897.

debt of the said A. B. and C. D., or either of them, or be recoverable from them or either of them, their or either of their heirs, executors, or administrators, personally. PROVIDED ALWAYS, that unless such an interpretation is inconsistent with the context, the expression the mortgagee [*remainder of interpretation clause*, p. 240, *supra*]. IN WITNESS, &c.

PRECEDENT LXXIII.

BY DEMISE TO SECURE PORTION.

LXXIV.

MORTGAGE *in* FEE *by the* PERSONAL REPRESENTATIVES *of a* DECEASED PERSON (*a*).

PRECEDENT LXXIV.

BY PERSONAL REPRESENTATIVES UNDER LAND TRANSFER ACT, 1897.

THIS INDENTURE, made, &c., BETWEEN A., of, &c., and B., of, &c. [*mortgagors*] (hereinafter called the mortgagors), of the one part, and C., of, &c. [*mortgagee*] (hereinafter called the mortgagee), of the other part. Parties.

WHEREAS D., late of ——, Esq., deceased, made his will, dated the —— day of ——, 1897, and thereby (among other things) appointed the mortgagors executors thereof: AND WHEREAS the said D. died on the —— day of ——, 1899, and his said will was proved by the mortgagors in the —— District Registry on the —— day of ——, 1899, [*or recite D.'s death intestate and grant of letters of administration to the mortgagors, infra*, p. 370]: AND WHEREAS the said D. was at his death seised of the hereditaments hereinafter granted for an estate of inheritance in fee simple in possession, free from incumbrances: AND WHEREAS the mortgagee has agreed to lend to the mortgagors the sum of £—— upon having the repayment thereof with interest

Recitals;
—of will;
—of death and probate;
—of seisin;
—of agreement for loan.

(*a*) See *supra*, p. 175, n. (*c*). The power of an executor or administrator to mortgage the assets is considered to be beyond question.

PRECEDENT LXXIV.

BY PERSONAL REPRESENTATIVES UNDER LAND TRANSFER ACT, 1897.

at the rate hereinafter mentioned, secured in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— now paid to the mortgagors by the mortgagee (the receipt whereof the mortgagors do hereby acknowledge), they the mortgagors as personal representatives of the said D. [in exercise of the power for this purpose vested in them under the Land Transfer Act, 1897, and of every other power enabling them, and by virtue also of their estate and interest (*a*)] do hereby grant unto the mortgagee, his heirs and assigns, ALL THOSE, &c. [*parcels*, pp. 138, 164, *supra*], TO HOLD the premises UNTO and TO THE USE of the mortgagee, his heirs and assigns. PROVIDED ALWAYS, that if the mortgagors, or any other persons or person interested in the equity of redemption of the said premises, shall on the —— day of —— next pay to the mortgagee the sum of £—— with interest for the same in the meantime at the rate of £— per cent. per annum, then the mortgagee shall at any time thereafter upon the request, and at the cost of the mortgagors or any such person as aforesaid, reconvey the said premises unto the mortgagors, or as they shall direct in fee simple. [*Interest to be paid half-yearly; mortgagors not to be personally liable, supra*, pp. 318, 319.] AND the mortgagors with intent to bind the mortgaged premises into whosesoever hands the same may come, but not so as to bind themselves personally or to incur any liability except in respect of their own acts [*covenant against registration, supra*, p. 246; *mortgagee's indemnity clause, supra*, p. 246]. PROVIDED ALWAYS, that unless such an interpretation is inconsistent with the context, the expression "the mortgagors" hereinbefore used shall include the survivor of them and other the personal representatives or representative for the time being of the

Witnesseth.

Grant.

Habendum.

Proviso for redemption.

Interpretation clause.

(*a*) The words in brackets are hardly necessary.

said D., their and his assigns, and the expression "the mortgagee" hereinbefore used shall include his executors, administrators, and assigns. IN WITNESS, &c.

PRECEDENT LXXIV.

BY PERSONAL REPRESENTATIVES UNDER LAND TRANSFER ACT, 1897.

LXXV.

DEED *of* FURTHER CHARGE *by* INDORSEMENT (*a*).

PRECEDENT LXXV.

FURTHER CHARGE BY INDORSEMENT.

THIS INDENTURE, made, &c., BETWEEN the within named A. [*the mortgagor*] (hereinafter called the mortgagor), of the one part, and the within named B., C., and D. [*mortgagees*] (hereinafter called the mortgagees), of the other part. WHEREAS the within mentioned sum of £—— (*b*), with interest thereon from the —— day of —— last, is owing on the security of the within written indenture. AND WHEREAS the mortgagees have agreed to lend to the mortgagor the further sum of £——, on having the repayment thereof with interest at the rate hereinafter mentioned, secured in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of £—— this day paid to the mortgagor by the mortgagees, out of monies belonging to them on a joint account (the receipt of which sum the mortgagor doth hereby acknowledge), HE the mortgagor doth hereby covenant with the mortgagees, that he the mortgagor will, on the —— day of —— next (*c*), pay to the mortgagees the sum of

Parties.

Recital that mortgage debt remains owing with some interest.

Agreement for further advance.

Witnesseth.

Consideration.

Covenant by mortgagor for payment of further advance, and interest.

(*a*) Compare Form II. of the Fourth Schedule to the Conv. Act, 1881 (App. IV., *infra*).

(*b*) The principal sum in the original mortgage deed.

(*c*) If the further advance be made in the interval between the half-yearly days appointed by the mortgage deed for the payment of interest, the day named here should be the half-yearly day next following the date of the advance.

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£—— (*a*), with interest for the same in the meantime at the rate of £— per cent. per annum, AND if the same sum or any part thereof shall remain unpaid after the said —— day of —— next, will thenceforth pay to them interest for the same or for so much thereof as shall for the time being remain unpaid at the rate of £—— per cent. per annum by equal half-yearly payments on the —— day of —— and the —— day of —— (*b*). AND FURTHER, that all the hereditaments and premises comprised in and expressed to be granted by the within written indenture shall be charged with the payment, and shall not be redeemable but upon payment, by the mortgagor to the mortgagees, of as well the said sum of £—— (*a*) and interest for the same according to the covenant hereinbefore contained in that behalf, as the within mentioned sum of £—— (*c*) and the interest due and to become due for the same. AND FURTHER that all powers and provisions in the within written indenture contained, or by statute implied, for securing or obtaining the payment of the principal money and interest thereby secured, shall extend and be applicable so as to be a further security for the said sum of £—— (*a*) and interest, as if the said sum had formed part of the principal money secured by the within written indenture (*d*). [*Interpretation clause, supra*, pp. 252—254.] IN WITNESS, &c.

Covenant that mortgaged premises shall be charged with the further advance and interest;

and that the powers of the mortgage deed shall be applicable to the further advance.

(*a*) The further advance.

(*b*) The half-yearly days of payment of interest under the original mortgage.

(*c*) The original principal sum.

(*d*) This clause may be omitted where there are no special powers and provisions.

LXXVI.

Mortgage *to a* Building Society *of* Freeholds, Leaseholds, *and* Copyholds. Powers of Management (*a*).

Precedent LXXVI.

To a Building Society.

THIS INDENTURE, made, &c., between A. B., of, &c., a Member of the —— Building Society, incorporated Parties.

(*a*) See as to mortgages to Benefit Building Societies, Davidson's Prec. Conv. vol. ii. pt. ii. 4th ed. pp. 703 *et seq.*, and notes. The Act 6 & 7 Will. IV. c. 32, by which such societies were formerly regulated, was repealed by the Building Societies Act, 1874 (37 & 38 Vict. c. 42), which is amended by the Building Societies Acts, 1875, 1877, 1884, and 1894 (38 Vict. c. 9; 40 & 41 Vict. c. 63; 47 & 48 Vict. c. 41; and 57 & 58 Vict. c. 47); but such repeal does not affect any Benefit Building Society previously certified under the repealed Act, until such society obtains a certificate of incorporation under the Act of 1874. See sect. 7 of the Act of 1874, and sect. 2 of the Act of 1875. A Building Society, upon receiving a certificate of incorporation under the Act of 1874, becomes (sects. 9 & 13) a body corporate, having a common seal, and having power to hold land by way of mortgage. Hence mortgages to Building Societies, under the Building Societies Act, 1874, differ from mortgages to Benefit Building Societies under 6 & 7 Will. IV. c. 32, by being taken in the name of the society, not in the names of trustees. As to mortgages of copyholds, see sect. 28 of the Act of 1874, and n. (*a*) at p. 327, *infra*. In most other respects, mortgages to Building Societies now stand on the same footing as mortgages to Benefit Building Societies under 6 & 7 Will. IV. c. 32. As to whether they can be transferred without the concurrence of the mortgagor, see *Re Rumney and Smith*, [1897] 2 Ch. 351. It is provided by the Land Transfer Act, 1897, s. 9 (3), that registered land may be charged in favour of a Building Society under the Acts by means of a mortgage made in accordance with the rules of the society, and that the mortgage shall be deemed a charge made in the prescribed manner, and be registered accordingly.

As the limits of this work do not admit of more than one Precedent of such a mortgage, it has been thought best to frame this Precedent, as including freeholds, leaseholds, and copyholds, so as to give the provisions applicable to properties of each of these

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TO A BUILDING SOCIETY.

under the Building Societies Act, 1874 [*mortgagor*] (hereinafter called the mortgagor), of the one part, and the said —— Building Society [*mortgagees*] (hereinafter called the Society), of the other part, WITNESSETH, that in consideration of £—— now paid by the Society to the mortgagor, being the amount to which he is entitled in respect of —— shares held by him in the funds of the Society (the receipt whereof he hereby acknowledges), the mortgagor hereby covenants with the Society, that he will punctually pay to the Society all subscriptions and other monies (*a*) which, according to the rules for the time being (*b*) of the Society, shall from time to time become payable in respect of the said —— shares, AND also will duly observe all the rules of the Society. AND THIS INDENTURE ALSO WITNESSETH, that for the consideration aforesaid, the mortgagor, AS BENEFICIAL OWNER (*c*), hereby grants unto the Society, and their assigns, ALL the hereditaments specified in the first part of the schedule hereto (*d*), TO HOLD the premises UNTO

Witnesseth.

Consideration.

Receipt.

Covenant to pay subscriptions and observe rules.

Witnesseth, secondly.

Grant of freeholds.

Parcels.

Habendum.

tenures, though, in fact, mortgages to Building Societies, being for small sums, will usually include property of one tenure only, in which case the parts of this Precedent relating to property of any other tenure will, of course, be omitted.

The exemption from stamp duty on mortgages, formerly enjoyed by Benefit Building Societies, appears not to be extended to Building Societies under the Act of 1874, see sect. 41. It may be observed that by the Act of 1894, s. 13, a society under the Acts is prohibited from advancing money upon second mortgage, except where the prior mortgage is in favour of the society.

(*a*) *I.e.* due from him as a member. See *Bailes* v. *Sunderland, &c. Society*, W. N. 1886, 191; and also *Neath Building Society* v. *Luce*, 43 Ch. D. 158.

(*b*) See *Rosenberg* v. *Northumberland Society*, 22 Q. B. D. 373; *Osborne* v. *Amalgamated Society of Railway Servants*, [1909] 1 Ch. 163.

(*c*) See *supra*, p. 245, n. (*b*).

(*d*) If there be a plan, which is desirable, but is believed not to be very usual in small mortgages of this class, a reference thereto, and to the colouring thereon, should be added here and below, as at p. 211, *supra*.

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and TO THE USE of the Society, and their assigns. AND THIS INDENTURE ALSO WITNESSETH, that, for the consideration aforesaid, the mortgagor, AS BENEFICIAL OWNER (*a*), hereby demises unto the Society and their assigns, ALL the hereditaments specified in the second part of the said schedule hereto, To HOLD the last mentioned premises UNTO the Society and their assigns, for the residue of the term of - --- years, for which the same are held under the indenture of lease referred to in the said schedule [except the last day thereof (*b*)]. PROVIDED ALWAYS that, if the mortgagor shall pay to the Society all the subscriptions and other monies which, according to the rules for the time being of the Society, shall from time to time become payable in respect of the said —— shares, and shall observe and perform all the same rules and the covenants respectively herein contained and by statute implied, then the Society shall at any time thereafter, upon the request and at the cost of the mortgagor, endorse or cause to be endorsed upon these presents, a proper receipt under their common seal for all monies intended to be hereby secured, and thereupon these presents shall be vacated (*c*). [AND IT IS HEREBY AGREED that the mortgagor shall henceforth stand possessed of the said last day of the said term of —— years in the said leasehold premises in trust for the Society, and to be disposed of as they shall direct, but subject to the same equity of redemption as may for the time being be subsisting in the said premises by virtue of the

Witnesseth, thirdly.

Demise of leaseholds.

Parcels.

Habendum.

Proviso for vacating security.

Trust of last day of term.

(*a*) See *supra*, p. 262, n. (*a*).

(*b*) If the mortgage of the leaseholds is made by assignment, the words in brackets here and below will be omitted, and the word "assigns" will be substituted above for "demises."

(*c*) Such receipt will operate as a reconveyance under sect. 42 of the Building Societies Act, 1874, which corresponds in substance with sect. 5 of 6 & 7 Will. IV. c. 32. As to its effect when there are subsequent incumbrances, see *Hoskins* v. *Smith*, 13 App. Cas. 582; and *Crosbie-Hill* v. *Sayer*, [1908] 1 Ch. 866.

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last preceding proviso (*a*): AND the mortgagor hereby irrevocably appoints X., of, &c., Y., of, &c., and Z., of, &c., and the survivors and survivor of them, and the executors and administrators of such survivor, their or his assigns (*b*) to be the attorneys and attorney of the mortgagor, in his name and on his behalf, and as his act and deed to sign, seal, deliver and otherwise perfect every or any deed of assignment of the said term of —— years which may be desired by the Society or their assigns, in order to vest in them, or in any person or persons in trust for them, subject as aforesaid, or in any purchaser of the said leasehold premises, or any part thereof, the whole residue of the same term.]

Appointment of attorneys to assign nominal reversion.

Witnesseth, fourthly.

AND THIS INDENTURE ALSO WITNESSETH, that, for the consideration aforesaid, the mortgagor, AS BENEFICIAL OWNER, hereby covenants with the Society that he and all other necessary parties (if any) will forthwith surrender into the hands of the lord of the manor of ——, in the county of ——, according to the custom thereof, ALL the hereditaments specified in the third part of the said schedule hereto (which said premises are in the court rolls of the said manor described as follows, (that is to say), [*description from the rolls*] (*c*)) TO THE USE of the Society, and their assigns, or of any persons or person nominated by the Society for that purpose, their or his heirs and assigns, according to the custom of the said manor, and by and under the accustomed rents, fines, suits, and services, and subject to a condition for making void the said surrender corresponding with the proviso hereinbefore contained for vacating these presents, AND ALSO that, until such surrender shall be made, he and his heirs will stand seised

Covenant to surrender copyholds.

Parcels.

To the use of the Society or their nominees.

Declaration of trust until surrender.

(*a*) See *supra*, p. 263, n. (*a*), as to this declaration of trust and the power of attorney following. It is not necessary that the attorneys should be made parties.

(*b*) Or "and each of them."

(*c*) The reference to the description on the rolls may be omitted, if the description in the schedule corresponds closely therewith.

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of the same premises, IN TRUST for the Society and their assigns, and subject to the same equity of redemption to which the same would have been subject, if so surrendered as aforesaid (*a*). AND IT IS HEREBY AGREED, that the Society may at any time hereafter, without any further consent on the part of the mortgagor, enter into the possession or receipt of the rents of the said several mortgaged premises, or any part thereof; and may appoint, at the cost and sole risk of the mortgagor, a person to collect and receive such rents, FOR THE USE and benefit of the Society, at such commission as the Society shall think fit: AND ALSO may demise the said premises, or any part thereof, for the purpose of occupation for any term not exceeding twenty-one years in possession at rack rent, or for building or repairing purposes for any longer term in possession, at the best rent which, under the circumstances, can reasonably be obtained without taking a premium; AND ALSO may absolutely sell the said premises or any part thereof, at such time, in such manner, and subject to such conditions, as they in their discretion may deem expedient, and may buy in, or rescind or vary any contract for sale, and resell, without being responsible for loss occasioned thereby (*b*). AND

Power for Society to enter into possession;

—appoint receiver;

—lease:

—sell.

Right to exercise

(*a*) Under sect. 28 of the Building Societies Act, 1874, when any society is entitled in equity to any copyhold hereditaments by way of mortgage, the lord of the manor is bound, if required by the society, to admit to the copyholds any persons not more than three, nominated by the society as their trustees, or may admit the society itself to such copyholds. The covenant in the text is framed so as to secure the society the benefit of these statutory rights, and the express declaration of trust until surrender, now omitted in other mortgages of copyholds, is here inserted, in order to give the society more distinctly the equitable title required by this section.

(*b*) The foregoing powers, it is conceived, ought to be inserted notwithstanding the Conv. Act, 1881 (App. IV., *infra*), as the similar powers given by sects. 18 and 19 are not as beneficial to the society. Compare the fuller powers given in a note at the end of this Precedent.

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powers to be unimpeachable.

no entry into possession, receipt of rents, lease, or sale, which may be made ostensibly under the present power, shall be impeachable by reason of any impropriety or irregularity in the exercise of the power, or by reason of the proviso next hereinafter contained, and no purchaser or lessee from, or other person dealing with the Society, shall be bound to inquire if any money is owing on the security of these presents, or into the right of the Society to exercise any of the said powers.

Society not to exercise powers till subscriptions in arrear;

PROVIDED ALWAYS, that the Society shall not execute any of the several powers of entering into possession or receipt of rents, leasing, and sale, hereinbefore contained, unless and until default shall have been made for —— monthly (*a*) meetings of the Society, in the payment of some subscription or other monies which shall have become payable in respect of the said —— shares according to the rules of the Society, or in the observance or performance of some of the said rules, or of the covenants respectively herein contained, and by statute implied [or unless and until such default shall have been made, as specified in No. — — of the present registered rules of the Society, or in any rule hereafter to be substituted for such rule, in or about the completion of the now unfinished buildings on the said premises (*b*)], or unless and until the mortgagor shall have been adjudged bankrupt, or shall have executed an assignment of his estate for the benefit of his creditors;

or default in completing buildings;

or mortgagor bankrupt.

Society's receipts to be discharges.

AND IT IS HEREBY AGREED, that the receipt of the Society for any money paid to them by virtue of these presents,

(*a*) The wording of this clause must depend on the rules of the society, and the requirements therein as to repayment of loans, &c. It is assumed in the text that the meetings of the society are monthly, and that the payments by members are to be made at such meetings.

(*b*) The clause in brackets will be omitted if there are no buildings in course of erection on the mortgaged property. It is assumed here and below that the rules of the society make provision for completion of buildings and insurance of mortgaged property.

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shall effectually discharge the person or persons paying the same therefrom, and from being concerned to see to the application thereof. AND IT IS HEREBY FURTHER DECLARED that the Society shall, out of the monies which shall arise from any exercise of the said powers, in the first place discharge all the expenses incurred in or about the collection or receipt thereof, or otherwise in respect of the premises; and in the next place apply such monies in or towards satisfaction of the monies owing according to the aforesaid rules, in respect of the said shares, or otherwise owing on this security (and for this purpose, in case of a sale, under the power hereinbefore contained, all monies which would at any time afterwards become due in respect of the said shares according to the rules of the Society, shall be considered as due and owing at the time of such sale), and shall pay the surplus (if any) to the mortgagor, his executors, administrators, or assigns. AND IT IS HEREBY AGREED, that Nos. ——, ——, and ——, of the present registered rules of the Society (*a*), or any rules hereafter to be substituted for the same rules respectively, having reference to the completion of unfinished buildings, and to insurance from loss by fire, or such of the same rules respectively as, regard being had to the nature and intent thereof, are capable of applying to this transaction, shall apply thereto as if here inserted, *mutatis mutandis*, and also that the other rules for the time being of the Society, so far as capable of applying to this transaction, and except so far as hereby expressly varied, or as inconsistent with any of the provisions of these presents, shall also (though not expressly herein referred to) apply to this transaction. AND the mortgagor hereby covenants with the Society, that he the mortgagor will, during the continuance of the security, observe and perform all the rules for the time being of the Society relating to or affecting the premises herein

Trusts of monies received under powers.

Clause incorporating rules.

Covenants by mortgagor;

to observe rules.

(*a*) See *supra*, p. 328, n. (*a*).

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comprised (*a*). [PROVIDED ALWAYS that if the Society shall at any time by virtue of these presents, or of the

Attornment clause (*b*).

(*a*) As to the effect of such a covenant in preserving the right to consolidate, where the rules contemplate the existence of such a right, see *Andrews* v. *City Permanent Benefit Building Society*, 44 L. T. 641; as to alterations in the rules, see *Bradbury* v. *Wild*, [1893] 1 Ch. 377; *Barnard* v. *Tomson*, [1894] 1 Ch. 374; *Sixth West Kent, &c. Society* v. *Hills*, [1899] 2 Ch. 60.

(*b*) The object of this clause, which is in effect an attornment clause (as to which see Davidson's Prec. Conv. vol. ii. pt. ii. 4th ed. pp. 92 and 107), is to give a remedy, by distress, for recovery of interest or other payments in arrear when the mortgagor is himself in possession. Such an attornment to a second mortgagee is valid notwithstanding a prior attornment to the first mortgagee, so that a valid distress may be levied under both mortgages: *Ex parte Punnett, Re Kitchin*, 16 Ch. D. 226. The tenancy founded on an attornment clause ends with the death of the mortgagor, and a new tenancy between the devisee or heir of the mortgagor and the mortgagee is not to be inferred merely from occupation of the property and payment of interest: *Scobie* v. *Collins*, [1895] 1 Q. B. 375. The efficacy of the clause, unless the mortgage be registered under the Bills of Sale Act, 1878, is much prejudiced by sect. 6 of that Act, which puts such a clause, as to the chattels liable to be distrained thereunder, on the same footing as a bill of sale.

It was formerly supposed that a mortgagee might avail himself of an attornment clause in his mortgage deed, without incurring the responsibilities of a mortgagee in possession, and in *Stanley* v. *Grundy*, 22 Ch. D. 478, it appears to have been so decided. But the cases of *Re Stockton Iron Furnace Co.*, 10 Ch. D. 335, and *Ex parte Jackson*, 14 Ch. D. 725 (see also *Ex parte Punnett, Re Kitchin, ubi supra*), contain dicta to the effect that an attornment clause renders the mortgagee liable for wilful default in respect of the rent received. It was doubted, moreover, at one time whether the attornment clause was not absolutely avoided by sect. 9 of the Bills of Sale (1878) Amendment Act, 1882; and of course it cannot be treated as a bill of sale in the form required by that section. Clearly such a clause is to be deemed a bill of sale of any chattel that may be distrained under it, and is therefore void as to such chattels unless the deed containing it be registered: *Green* v. *Marsh*, [1892] 2 Q. B. 330. But in *Mumford* v. *Collier*, 25 Q. B. D. 279, an attornment clause contained in a mortgage deed was held not to be avoided in such a manner as to destroy the relation of landlord

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rules for the time being of the Society, become entitled to enter into possession, or receipt of the rents of the said premises, and the mortgagor shall then or afterwards be in the occupation of whole or part, he shall, during such occupation, be deemed to be tenant thereof at the will of the Society, at a clear monthly rent of £—, payable to the Society monthly in advance, at the place where, and on the days, and during the hours, when the monthly meetings of the Society shall from time to time be held, and the first payment of such rent shall become due on the day on which the Society shall first become entitled to enter into such possession or receipt, but every payment actually made of such rent shall be accepted by the Society in or towards satisfaction of the subscriptions and monies for the time being payable by the mortgagor under the said rules and these presents respectively.]

and tenant created by it between the mortgagor and the mortgagee, and presumably it does not avoid the covenant for payment of principal and interest, or any other part of the deed except in respect of the chattels comprised in the deed (*Re Burdett*, 20 Q. B. D. 310). Therefore, it may be proper in some cases to insert an attornment clause (of which another form is given, *supra*, p. 247); since it gives to the mortgagee the right of recovering immediate possession under Ord. III. r. 6 (*Mumford* v. *Collier*, *ubi supra*; and see also *Kemp* v. *Lester*, [1896] 2 Q. B. 162).

If such a clause be inserted, the rent reserved must be fixed so as to correspond with, and cover, the periodical payments required from the member. As to the effect of reserving a rent out of proportion to the annual payments in respect of the mortgage debt, see *Ex parte Williams*, 7 Ch. D. 138, and the cases cited in the last preceding note, and compare *Ex parte Voisey*, 21 Ch. D. 442. In *Ex parte Harrison*, *In re Betts*, 18 Ch. D. 127, the proceeds of a distress levied under the clause was treated as applicable to the payment of principal as well as interest. No form of a power of distress is here given, because such a power is clearly a bill of sale, and must therefore be useless; but such a power may readily be framed from that given, *supra*, p. 203, *mutatis mutandis*, and in particular substituting default in payment of interest for default in payment of rent.

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Interpretation clause.

AND LASTLY, it is hereby agreed and declared, that the expression, the mortgagor, shall, unless such interpretation be inconsistent with the context, be construed to include his heirs, executors, administrators, and assigns (*a*). IN WITNESS, &c.

THE SCHEDULE above referred to.

Part I. Part II. Part III.

(*a*) The following is a clause intended to enable mortgagees to enter and manage the mortgaged property without incurring the responsibilities incident to possession, and adapted to these forms :—

Power for mortgagees to enter and manage and develop the mortgaged estate ;

"PROVIDED ALWAYS, and it is hereby declared, that it shall be lawful for the mortgagees, or for any receiver appointed under the statutory power in that behalf, at any time or times after they shall have become entitled to exercise the power of sale herein by statute implied, and until all the said premises shall have been sold, to enter into possession of the said premises or of the unsold parts thereof for the time being, and from time to time to relinquish and resume possession, and while in possession to manage or superintend the management of the said premises and all buildings now or hereafter to be erected thereon, and to develop the same upon the plan or scheme upon which the same are or shall be managed and developed by the mortgagor, his heirs or assigns, or upon any other plan or scheme which the mortgagees shall think fit, and to let or demise for any term or terms, or from year to year, or otherwise dispose of all or any part or parts of the said premises either for building or for other purposes, and to appropriate and lay out, or authorise the lessee or lessees to appropriate and lay out any part of the said premises for squares, gardens, or other open spaces, roads, and other works, which may tend to the adaptation and development of the said premises or any part thereof as a building estate, and to

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repair and complete houses and other buildings, and to insure houses, buildings, and other property against loss or damage by fire, and to make allowances to and arrangements with all or any of the tenants or occupiers for the time being of the said premises and with other persons, and to accept surrenders of leases and tenancies, and generally to deal with the premises as fully and effectually as an absolute owner could do, and also to demand, sue for, collect and receive, and give effectual discharges for all the rents and profits due at the time this power shall be exercised, or which shall become due in respect of the said premises. AND in case of non-payment thereof or of any part thereof to enter into and upon all or any of the tenements and hereditaments in respect of which any rents or profits shall be unpaid, and for the same rents and profits and the costs and expenses incurred by or incidental to the non-payment thereof to distrain, and the distress and distresses there found to dispose of in due course of law, and to take and use all lawful proceedings and means for recovering and receiving the said rents and profits, and for evicting and ejecting defaulting tenants and occupiers from all or any of the said premises, and determining the tenancy and occupation thereof, and for obtaining, recovering, and retaining possession of all or any of the premises held by such defaulters, and also to commence and prosecute and to defend all actions, claims, demands, and proceedings touching the same premises which may arise in any way in consequence of the exercise of this present power, and for all or any of the aforesaid purposes to execute and do all such instruments and things as shall to the mortgagees or the said receiver seem necessary or expedient, and for the purposes aforesaid to employ all such agents, managers, and others as shall be thought necessary or expedient, and to pay them such salaries, wages, and other remuneration as shall be just and reasonable. AND IT IS HEREBY AGREED that the mortgagees shall not

—and to distrain for rent, evict, and take proceedings generally;

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BILL OF SALE.

BILL *of* SALE *by way of Mortgage of* FURNITURE (*a*).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. [*mortgagor*], of the one part, and C. D., of, &c.

—without incurring the responsibilities incident to possession.

be chargeable as mortgagees in possession, whether in respect of any act or acts done or purported to be done in exercise of the aforesaid powers or any of them or otherwise, or for any rents or profits of the said premises except such as they shall actually receive, nor for any act, omission, or default of the mortgagees, or any such receiver, agent, or manager, as aforesaid, but all such losses shall be wholly borne by the mortgagor, and that all monies (if any) which the mortgagees or such receiver shall advance or expend in the execution of the aforesaid powers or any of them (and which monies they are respectively hereby authorised to advance or expend at their discretion) together with interest on such monies at the rate of £5 per cent. per annum from the time of the same respectively having been advanced, shall be a charge upon the mortgaged premises."

As to bills of sale generally.

(*a*) The law as to bills of sale in England is now mainly regulated by the Bills of Sale Acts, 1878 and 1882 (41 & 42 Vict. c. 31, and 45 & 46 Vict. c. 43), of which the former repealed the Act of 1854 (17 & 18 Vict. c. 36), and the amending Act of 1866 (29 & 30 Vict. c. 96), but re-enacted, with some modification, the provisions of those Acts, and the latter (it should be observed) applies only (see sect. 3) to bills of sale given (whether by a private individual or a company; *Attenborough's Case*, 28 Ch. D. 682) by way of security for the payment of money; but there is no such distinction in the Act of 1878 (see *Tuck* v. *Southern Counties Deposit Bank*, 42 Ch. D. 471). The Bills of Sale Act, 1890 (53 & 54 Vict. c. 53), and the Bills of Sale Act, 1891 (54 & 55 Vict. c. 35), relate solely to securities on imported goods given prior to their deposit in a warehouse, factory,

or store, or to their being reshipped for export or delivered to a purchaser, such securities being by those Acts exempted from the operation of the Bills of Sale Acts, 1878 and 1882. See as to Bills of Sale, Davidson's Prec. Conv. vol. ii. pt. ii. (4th ed.), pp. 147 to 159, and 353, n. (*a*), and the subsequent notes to this Precedent. As to the distinction between a bill of sale and a pledge of chattels with delivery of possession, see *Ex parte Hubbard*, 17 Q. B. D. 690—698; *Hilton* v. *Tucker*, 39 Ch. D. 669; *Morris* v. *Delobbel-Flipo*, [1892] 2 Ch. 352; *Charlesworth* v. *Mills*, [1892] A. C. 231; *Ramsay* v. *Margrett*, [1894] 2 Q. B. 18; and see, as to a carrier's lien, *Great Eastern Railway Co. and Lord's Trustee*, [1909] A. C. 109. Where there is a *bonâ fide* sale of chattels out and out followed by a hiring agreement, the agreement is not within the Bills of Sale Acts; but if the transaction is really one of loan and security, there being in truth no hiring, the agreement is a bill of sale: the intention of the parties, not the form of the transaction, is to be looked at. *Re Watson*, 25 Q. B. D. 27; *Madell* v. *Thomas*, [1891] 1 Q. B. 230; *Beckett* v. *Tower Assets Co.*, *ib.* 638; *Lee* v. *Butler*, [1893] 2 Q. B. 318; *Gough* v. *Wood*, [1894] 1 Q. B. 713; *Trustee of G. Mellor* v. *Maas*, [1902] 1 K. B. 137, [1903] 1 K. B. 226, [1903] A. C. 102. As to hire and purchase agreements generally, see *Helby* v. *Matthews*, [1895] A. C. 471; *McEntire* v. *Crossley Bros., Limited*, *ib.* 457; *Payne* v. *Wilson*, [1895] 1 Q. B. 653, 2 Q. B. 537; and *Hobson* v. *Gorringe*, [1897] 1 Ch. 182, where a gas engine let out on such an agreement, and affixed by the hirer to his freehold, was held to pass to a subsequent mortgagee of the freehold as a fixture; distinguished in *Ellis* v. *Glover*, [1908] 1 K. B. 388; and *Re Samuel Allen & Sons, Ltd.*, [1907] 1 Ch. 575; see also *Brooks* v. *Beirnstein*, [1909] 1 K. B. 98. Debentures of a joint stock company creating a floating charge upon its real and personal property are not within the Act of 1878; and they are expressly excluded from the operation of the Act of 1882 by sect. 17 (*Re Standard Manufacturing Co.*, [1891] 1 Ch. 627; *Clark* v. *Balm, Hill & Co.*, [1908] 1 K. B. 667). An agreement for a marriage settlement is within the exception of "marriage settlements" in sect. 4 of the Act of 1878 (*Wenman* v. *Lyon & Co.*, [1891] 1 Q. B. 634; affirmed, [1891] 2 Q. B. 192). An agreement for a lien on stock-in-trade to secure the purchase-money of a business was held to require registration as a bill of sale in *Coburn* v. *Collins*, 35 Ch. D. 373. In *Pulbrook* v. *Ashby & Co.*, 56 L. J. (N. S.) Q. B. 376, approved of by the Court of Appeal in *Stevens* v. *Marston*, W. N. 1890, 193, and also in *Re Roundwood Colliery Co.*, [1897] 1 Ch. 373, a power of distress reserved to the lessor in an agreement for a lease of a public-house for the recovery

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of money due for liquor which should have been supplied by him to the lessee was held void, the agreement not having been registered as a bill of sale. In the last-mentioned case the distinction is pointed out between powers of distress reserved by a lessor in respect of matters outside the relationship of landlord and tenant and the like powers reserved for the *bonâ fide* object of securing payment of rent, in which case they are outside the Bills of Sale Acts altogether. And as to attornment clauses in mortgages, see note (*b*), *supra*, p. 330. As to bills of sale by partners and other joint owners, see *Re Bainbridge*, 8 Ch. D. 218; *Ex parte Brown*, 9 Ch. D. 389; *Ex parte Popplewell*, 21 Ch. D. 73.

The Bills of Sale Acts, 1878 and 1882, did not, nor did the earlier Acts, extend to Scotland or Ireland, but bills of sale in Ireland are now regulated by the Bills of Sale (Ireland) Acts, 1879 and 1883, which correspond generally with the English enactments and apparently are not affected by the above-mentioned Acts of 1890 and 1891. As to English bills of sale of chattels in Scotland, see *Coote* v. *Jecks*, L. R. 13 Eq. 597; and in Ireland, *Brooks* v. *Harrison*, 6 L. R. Ir. 85.

As to the statutory form.

Under sect. 9 of the Act of 1882, "a bill of sale made or given by way of security for the payment of money by the grantor thereof shall be void" (not merely, it should be observed, against persons other than the grantor), "unless made *in accordance with* the form in the Schedule to this Act annexed." (See the next following Precedent LXXVIII., which is a copy of this form.) The form applies to personal chattels only, and a bill of sale which includes chattels real is not in accordance with the form, and is therefore void as regards the personal chattels under this section. *Cochrane* v. *Entwhistle*, 25 Q. B. D. 116; *Swanley Coal Co.* v. *Denton*, [1906] 2 K. B. 873, where the inclusion of a title deed in the schedule was held insufficient to create a charge on the land to which it related, and the bill was upheld by a majority of the Court of Appeal. It has been laid down that the general intention of the Act is that the loan of money upon the security of a bill of sale shall be a simple transaction (see *Melville* v. *Stringer*, 13 Q. B. D. 392), and that the instrument will be obnoxious to the above section if anything substantial is subtracted from the statutory form, or anything actually inconsistent added to it (*Davis* v. *Burton*, 11 Q. B. D. 537, 540); if it does not produce the precise legal effect, neither more nor less, of that form, or the variance is such as might reasonably deceive those for whose benefit the form is provided (*Ex parte Stanford*, 17 Q. B. D. 259). It must be so framed that its nature and meaning shall be clear and intelligible to persons of ordinary understanding

without technical knowledge, and that the borrower shall be able to know the nature of the security he has given, and a new proposed creditor, by searching the register, to understand the position of the borrower (*Melville* v. *Stringer*, *ubi supra*); it must not be a puzzle to anyone who reads it (*Furber* v. *Cobb*, 18 Q. B. D. 494, 502), or so intricate or prolix in its recitals or otherwise as to be obscure (17 Q. B. D. 264, 274). See also *Peace* v. *Brookes*, [1895] 2 Q. B. 451, where a stipulation intended to secure for the grantee a monopoly of a part of the grantor's custom was held to invalidate the bill: *Saunders* v. *White*, [1901] 1 Q. B. 70; [1902] 1 K. B. 472, where a bill given by two grantors not having a joint interest, but each being a sole owner of a portion of the goods, was held to be not in accordance with the form: *Smith* v. *Whiteman*, [1909] 2 K. B. 437, where printed conditions were handed to the grantee and made part of the bargain, and the bill was declared void; and for a general discussion of the statutory form, *Thomas* v. *Kelly*, 13 App. Cas. 506, 516, 519. An untrue statement of the consideration is not a deviation from the form so as to avoid the bill under sect. 9 (*Heseltine* v. *Simmons*, [1892] 2 Q. B. 547). It would seem that an instrument may be a bill of sale within the Acts, although it be of such a nature as to be incapable of being framed in accordance with the statutory form, and is therefore necessarily invalid (*Myers* v. *Elliott*, 16 Q. B. D. 526, 530; *Ex parte Parsons*, *ib.* 532; *Hughes* v. *Little*, 18 Q. B. D. at p. 35; *Mackay* v. *Merritt*, 34 W. R. 433). And it would appear that the operation of sect. 9 is not confined to cases of money lent by the grantee of the bill to the grantor, but extends to every case in which the grantor binds himself to pay money to the grantee and gives the bill of sale to secure that payment. See *Hughes* v. *Little*, *ubi supra*, at p. 36.

As to description of grantor and grantee.

The residence and occupation of the grantor and grantee, and of every attesting witness, must be correctly described in the deed, and also in the affidavit required by sect. 10 (2) of the Act of 1878 (corresponding with sect. 1 of the Act of 1854); see the cases collected in Dav. Prec. Conv. vol. ii. pt. ii. 4th ed. p. 150, n. (*i*). In *Dolcini* v. *Dolcini*, [1895] 1 Q. B. 898, Cave, J., decided, however, that it was not necessary to set out the grantor's residence and description in the body of the deed, as well as in the affidavit under sect. 10 of the Act of 1878; but compare the later case of *Altree* v. *Altree*, [1898] 2 Q. B. 267. If the grantor has more than one residence, or more than one business or occupation (*Re Fitzpatrick*, 19 L. R. Ir. 206), it has been held that all should be described (*Wallis* v. *Smith*, W. N. 1882, p. 77; but see *Ex parte Knightley*, 51 L. J. Ch. 823; 30 W. R. 844; *Greenham* v. *Child*, 24 Q. B. D. 29, where

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[*mortgagee*], of the other part, WITNESSETH, that, in consideration of the sum of £—— (*a*) now paid to the said

Witnesseth.

the mention of one of several places of business was held sufficient in the affidavit). See also, as to the description of the grantor, *Ex parte National Mercantile Bank*, 15 Ch. D. 42; *Castle* v. *Dowaton*, 5 C. P. D. 56; *Cooper* v. *Davis*, 32 W. R. 329; *Ex parte Popplewell*, 21 Ch. D. 73; *Downs* v. *Salmon*, 20 Q. B. D. 775; *Lee* v. *Turner*, *ib.* 773; *Sharp* v. *McHenry*, 38 Ch. D. 427; *Kemble* v. *Addison*, [1900] 1 K. B. 430, where a bill of sale granted by a married woman so described was held bad because she had an occupation which was not stated; and *Stokes* v. *Spencer*, [1900] 2 K. B. 483, where the bill was held not to be invalidated by the grantor's name being wrongly stated. And as to the description of a grantee, *Simmons* v. *Woodward*, [1892] A. C. 100; and *Altree* v. *Altree*, *ubi supra*, where the bill was held void under sect. 9 of the Act of 1882, because the address and description of the grantee were not given.

Partners or joint creditors (but not several separate creditors) may be grantees in one and the same bill of sale (*Melville* v. *Stringer*, 13 Q. B. D. 392).

As to statement of the consideration.

(*a*) Sect. 8 of the Act of 1882 requires that the consideration shall be "truly set forth" in the bill of sale; otherwise it will be void in "respect of the personal chattels comprised therein." See *Heseltine* v. *Simmons*, [1892] 2 Q. B. 547, in which it is stated that the section only applies to bills given as security for money. It is sufficient if the legal, or mercantile, or business effect of the facts is stated with substantial accuracy, though the details of the transaction are not set forth: *Credit Co.* v. *Pott*, 6 Q. B. D. 295, 299; *Ex parte Johnson*, 26 Ch. D. 338, 348; *Richardson* v. *Harris*, 22 Q. B. D. 268; *Darlow* v. *Bland*, [1897] 1 Q. B. 125.

A bill of sale made or given in consideration of any sum under 30*l.* is now void (sect. 12 of the Act of 1882: see *Davis* v. *Usher*, 12 Q. B. D. 490; *Darlow* v. *Bland*, *ubi supra*).

It has been held that the consideration is truly set forth as "paid to the grantor" where it is by his direction applied in satisfying existing debts due from him to third persons (*Hamlyn* v. *Betteley*, 5 C. P. D. 327; *Ex parte Firth*, 19 Ch. D. 419; *In re Cann*, 13 Q. B. D. 36); or to the grantee (*Ex parte Charing Cross Bank*, 16 Ch. D. 35, 38; *Ex parte Bolland*, 21 Ch. D. 543, 549); and that a collateral agreement as to the application of the consideration in payment of such debts need not be stated (*Ex parte National Mercantile Bank*, 15 Ch. D. 42). See also *Thomas* v. *Searles*, [1891] 2 Q. B. 408, where the collateral agreement was that out of the

A. B. by the said C. D. (the receipt of which the said A. B. hereby acknowledges), [*or whatever else the consum advanced the grantor should pay off an existing debt due to the grantee and partly secured by a prior bill of sale; and *Heseltine* v. *Simmons*, [1892] 2 Q. B. 547, where the agreement was that the bill should not be made available until the grantee had exhausted certain other securities for the advance. But it would seem that if any part of the consideration stated to be paid to the grantor be in fact paid to or retained by the grantee for commission or expenses generally, the bill of sale will be void under sect. 8 (*Hamilton* v. *Chaine*, 7 Q. B. D. 319; see *Ex parte Charing Cross Bank*, 16 Ch. D. 35; *Ex parte Rolph*, 19 Ch. D. 98; *Ex parte Firth*, *ib.* 419). These cases show that the distinction is between the application of the consideration in payment of debts existing independently of the transaction of loan, and its application in payment of debts which arise out of the transaction itself. In *Ex parte Challinor*, 16 Ch. D. 260, where the grantee retained part of the consideration to pay solicitor's costs of preparing the deed, a further sum for costs previously incurred, and an auctioneer's fee for valuing the property with a view to the loan, the statement of the whole consideration as "paid to" the grantor was held not to vitiate the bill of sale. In *Ex parte Firth* (*ubi sup.*), however, Jessel, M. R., questioned the soundness of this decision if it was intended to cover debts which do not become such until after the transaction has been completed; and Brett, L. J., limited its authority to cases in which the debt is existing at the time of the execution of the bill of sale. The debt cannot be truly said to be included in money paid to the grantor, unless it is a debt due and payable irrespective of the agreement for payment of the money which is in question: *Richardson* v. *Harris*, 22 Q. B. D. 268, 273, where it was held that the consideration was not truly set forth as paid to the grantor, and that the bill was void, the facts being that by agreement with the grantor part of the money was retained by the grantee in satisfaction of acceptances (then running) given by the grantor to the grantee, a sum to be paid for hire of furniture assigned by the bill, and a sum for expenses of the transaction. This case was distinguished in *Re Wiltshire*, [1900] 1 Q. B. 96, where a part of the money paid by the grantee was by agreement applied in retiring a promissory note upon which both grantor and grantee were liable, and the bill was held good. In *Collis* v. *Tuson*, 46 L. T. 387, the consideration set forth as paid to the grantor was the sum actually so paid, being the amount of the advance after deducting interest and expenses, and

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sideration may be] HE the said A. B. (*a*) doth hereby assign unto the said C. D., his executors, administrators, and assigns, all and singular the several chattels and things specifically described in the schedule hereto annexed (*b*) by way of security for the payment of the

Assignment.

Parcels.

By way of security for the debt and interest.

the bill was held good for the whole advance. But a bill made in consideration of a sum expressed to be "now owing" to the grantee was held void where the sum represented *unpaid* acceptances (*Mayer* v. *Mindlevich*, 59 L. T. 400), and where there was only a liability to pay the sum by instalments at future dates (*Darlow* v. *Bland*, [1897] 1 Q. B. 125). The consideration is truly set forth as "*now* paid," although it consists of a pre-existing debt (*Credit Co.* v. *Pott*, 6 Q. B. D. 295; see *Ex parte Johnson*, 26 Ch. D. 338; *Ex parte Allam*, 14 Q. B. D. 43, where a fresh bill was substituted for one which was invalid; and see *Ex parte Nelson*, 35 W. R. 264). And as to what is "payment" generally, see *Re Romer & Haslam*, [1893] 2 Q. B. 286; *Re Somerset*, [1894] 1 Ch. 231; *La Roche* v. *Beauchemin*, [1897] A. C. 358; *North Sydney, &c. Co.* v. *Higgins*, [1899] A. C. 263. The consideration is not truly set forth where the bill does not show on its face the true agreement, but is dependent for its real effect on some other instrument (*Sharp* v. *McHenry*, 38 Ch. D. 427).

(*a*) The insertion of the words "as beneficial owner" (or any other words which imply covenants under the Conv. Act, 1881) would render the bill of sale void: *Ex parte Stanford*, 17 Q. B. D. 259. The form given in the schedule to the Act of 1882 makes no reference (except in the operative part) to the representatives of the parties, and it has therefore been thought desirable to avoid such reference throughout the subsequent part of the Precedent.

As to parcels.

(*b*) The Act of 1882 provides (sect. 4) that every bill of sale shall have annexed thereto, or written thereon, a schedule containing an inventory of the personal chattels comprised in the bill of sale; and save as thereinafter mentioned (see sect. 6) shall have effect only in respect of the personal chattels specifically described in the said schedule, and *except as against the grantor* shall be void in respect of (sect. 4) any personal chattels not so specifically described, and (sect. 5) in respect of any personal chattels specifically described in the schedule, of which the grantor was not the true owner at the time of the execution of the bill of sale (see *Tuck* v. *Southern Counties Deposit Bank*, 42 Ch. D. 471); but (sect. 6) nothing contained in the foregoing sections of the

Act (that is, in effect, sects. 4 and 5) shall render a bill of sale void in respect of (1) any growing crops separately assigned or charged (*i.e.*, apart from any interest in the land: *Roberts* v. *Roberts*, 13 Q. B. D. 794, 806) where such crops were actually growing at the time when the bill of sale was executed; (2) any fixtures separately assigned or charged, and any plant or trade machinery, where such fixtures, plant, or trade machinery are used in, attached to, or brought upon any land, farm, factory, workshop, or other place in substitution for any of the like fixtures, plant, or trade machinery specifically described in the schedule. As to the meaning of "plant" in sub-sect. (2), see *London, &c. Co.* v. *Creasey*, [1897] 1 Q. B. 768. Under the Act of 1878 (sect. 5) trade machinery is "personal chattels," and includes all machinery used in or attached to any factory or workshop, except the fixed motive powers, and the steam, gas, and water pipes.

As to "true owner."

Where a bill of sale is given, not by way of absolute assignment (as in *Tuck* v. *Southern Counties Deposit Bank*, *ubi sup.*) but by way of mortgage to secure a loan, the grantor is still the "true owner" of the goods within sect. 5 of the Act of 1882, to the extent of his interest in the equity of redemption, for the purpose of giving a fresh bill of sale as security for a further advance (*Thomas* v. *Searles*, [1891] 2 Q. B. 408). And as to the meaning of the words "true owner," see also *Walrond* v. *Goldmann*, 16 Q. B. D. 121, where a bill of sale executed by a wife equitably entitled to the goods under her marriage settlement was held valid: *Re Tamplin*, W. N. 1890, 48, where the bill was executed by one partner; and *Re Sarl*, [1892] 2 Q. B. 591, where it was held that the words included a legal owner who was in fact a trustee for another.

As to "specific description."

A mere general description in the schedule (*e.g.*, "household furniture and effects") is not enough; there must be an inventory describing the chattels as business men would describe them (*Roberts* v. *Roberts*, 13 Q. B. D. 794, 806); but the bill of sale is not vitiated by the omission to mention the place in which the goods are situate (*Ex parte Hill*, 17 Q. B. D. 74). The description must be sufficient to identify the particular chattels, so as to separate them from other things of the same class, and should be such as is usual in inventories made for business purposes with regard to the particular subject-matter (*Witt* v. *Banner*, 19 Q. B. D. 276; 20 Q. B. D. 114, 118; see *Carpenter* v. *Deen*, 23 Q. B. D. 566; *Hickley* v. *Greenwood*, 25 Q. B. D. 277; *Thomas* v. *Kelly*, 13 App. Cas. 506; *Davidson* v. *Carlton Bank*, [1893] 1 Q. B. 82; *Davies* v. *Jenkins*, [1900] 1 Q. B. 133, where horses and cows were described merely by number). It has been suggested that future or after-acquired personal chattels

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are not capable of such specific description as is required by the Act of 1882, in which case a bill of sale which includes such chattels in the schedule must be void, except as against the grantor, in respect of them (see sects. 4 and 5, which apply to the schedule, while sect. 9 applies to the body of the bill of sale; see 20 Q. B. D. pp. 573, 574); and it is laid down that (see 13 App. Cas. 520) the Act of 1882 requires that the schedule to the deed shall, and the body of the deed shall not, contain the description of the goods, and that therefore a bill of sale purporting to assign after-acquired chattels is altogether void (*i.e.*, that it comes within sect. 9, and not merely within sects. 4 and 5) if (see *Kelly & Co.* v. *Kellond*, 20 Q. B. D. 569, 573, 574) the reference to them is contained in the body of the deed, and not in the schedule only (*Thomas* v. *Kelly*, 13 App. Cas. 506; followed in *Hadden & Co.* v. *Oppenheim*, 60 L. T. 962; and see *Coates* v. *Moore*, [1903] 2 K. B. 140). But, though a bill of sale be void in respect of "personal chattels" comprised in it, it may be a valid deed in respect of other property not within the scope of the Acts, if the security is severable (*Re Burdett*, 20 Q. B. D. 310; *Re Isaacson*, [1895] 1 Q. B. 333; and cf. *National Bank of Australasia, Ltd. and J. Falkingham & Sons*, [1902] A. C. 585).

As to assignments of after-acquired property.

As to the validity in equity of assignments of after-acquired property, see Dav. Conv. vol. ii. pt. ii. pp. 172 *et seq.*; *Walker* v. *Bradford Old Bank*, 12 Q. B. D. 511; *Ex parte Hauxwell*, 23 Ch. D. 626; *Hallas* v. *Robinson*, 15 Q. B. D. 288; *Re Clarke, Coombe* v. *Carter*, 36 Ch. D. 348; *Re Turcan*, 40 Ch. D. 5; *Thomas* v. *Kelly*, 13 App. Cas. 506; *Tailby* v. *Official Receiver*, *ibid.* 523, and cases there cited; *Re Kelsey*, [1899] 2 Ch. 530; and *Re Fitzgerald*, [1904] 1 Ch. 573. As to the effect of bankruptcy upon a previous assignment by the bankrupt of all future chattels which should be brought upon certain premises, see *Collyer* v. *Isaacs*, 19 Ch. D. 342; and see also *Ex parte Nichols*, 22 Ch. D. 782, where the assignment was of future receipts of a business; *Wilmot* v. *Alton*, [1897] 1 Q. B. 17; and *Re Davis & Co.*, 22 Q. B. D. 193, where an assignment of future payments under a hiring agreement was held valid as against the trustee in the bankruptcy of the assignor, on the ground that what was assigned was a debt due at the date of the assignment, though not payable until a future time, which distinguished the case from *Ex parte Nichols*, *ubi sup.*

As to "trade machinery."

If a mortgagee of land with trade machinery upon it intends to have power to sell the machinery apart from the land, he must take a bill of sale of the machinery (*Re Yates*, 38 Ch. D. 112; *Climpson* v. *Coles*, 23 Q. B. D. 465; *Small* v. *National Provincial Bank of*

sum of £—— and interest thereon at the rate of £—— per cent. per annum (*a*). AND the said A. B. doth hereby

England, [1894] 1 Ch. 686; *Johns* v. *Ware*, [1899] 1 Ch. 359). And see further as to trade machinery, *Topham* v. *Greenside Glazed Firebrick Co.*, 37 Ch. D. 281; *Re Burdett*, 20 Q. B. D. 310; and *Re Brooke*, [1894] 2 Ch. 600. As to covenants for title.

(*a*) The principle of the form is that a fixed sum shall be stated in the deed in figures and in direct terms, and that that sum, with rateable interest, shall be recovered by the holder (*Davis* v. *Burton*, 11 Q. B. D. 537, 540). The deed must specify a definite sum secured payable at a definite time, or at least the time must be defined by reference to specified events (*Bianchi* v. *Offord*, 17 Q. B. D. 484, 487), and not be dependent upon a contingency which may or may not happen (*Hughes* v. *Little*, 18 Q. B. D. 32, 36). Therefore bills of sale have been held void when the covenant was to pay "on demand" (*Hetherington* v. *Groome*, 13 Q. B. D. 789; *Mackay* v. *Merritt*, 34 W. R. 433); or seven days after demand (*Sibley* v. *Higgs*, 15 Q. B. D. 619); or to repay sums which might be paid by the grantee under a guarantee and promissory note (*Hughes* v. *Little*, *ubi sup.*). They have been held good where the covenant was to repay by unequal instalments (*Ex parte Rawlings*, 18 Q. B. D. 489; *Re Bargen*, [1894] 1 Q. B. 444, where the instalments included interest as well as principal, and were spread over an indefinite period; *Re Wood*, *ibid.* 605); to repay the whole principal sum at a date named together with the interest *then due* (*Watkins* v. *Evans*, 18 Q. B. D. 386); to repay "on or before" a fixed day (*De Braam* v. *Ford*, [1900] 1 Ch. 142); and where it was provided that, on default in payment of any monthly instalment of principal, the whole principal sum, with the interest *then due*, should become payable (*Lumley* v. *Simmons*, 34 Ch. D. 698; but *contra* where such a provision has the effect of making interest not yet due become immediately payable: *Roe* v. *Mutual Loan Association*, 56 L. T. 631). As to the amount secured.

The interest must be rateable and capable of being calculated up to the time when the principal shall be called in, so that the grantor may know what rate of interest he is to pay, and it must not be capitalized or be a lump sum (*Davis* v. *Burton*, 10 Q. B. D. 414; 11 Q. B. D. 537; *Myers* v. *Elliott*, 16 Q. B. D. 526; *Sharp* v. *McHenry*, 38 Ch. D. 427, 455; *Blankenstein* v. *Robertson*, 24 Q. B. D. 543); but it may be payable in unequal amounts (*Goldstrom* v. *Tallerman*, 18 Q. B. D. 1; and see *Edwards* v. *Marston*, [1891] 1 Q. B. 225; *Re Bargen*, *ubi sup.* (in which cases *Goldstrom* v. *Tallerman* was discussed); and *Weardale Coal and Iron Co.* v. *Hodson*, [1894] 1 Q. B.

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covenant with the said C. D., and agree and declare that HE the said A. B. will duly pay to the said C. D. the principal sum aforesaid together with the interest then due, on the —— day of —— next. AND if the said principal sum or any part thereof shall remain unpaid after that day, will, so long as the same shall remain unpaid, pay to the said C. D. interest for the said principal sum or for so much thereof as shall for the time being remain unpaid, at the rate aforesaid, by equal half-yearly payments, on the —— day of —— and the —— day of ——. AND FURTHER, that, so long as any money shall remain owing on the security of these presents, he the said A. B. will not remove any of the said premises from the dwelling-house in the said schedule mentioned without the previous consent of the said C. D., except for necessary repairs, and will replace any articles damaged or worn out with others of equal value to be included in this security. AND THAT the said C. D. may, at all reasonable times, so long as any money shall remain on this security, enter into the said dwelling-house to view the

Covenant to pay principal and interest on a specified day, and interest after that day if principal or any part remains unpaid.

Not to remove the furniture;

that the mortgagee may enter and view the condition;

598); or stated as so much in the £1 per month (*Lumley* v. *Simmons*, 34 Ch. D. 698, explained in *Re Wood*, [1894] 1 Q. B. 605). And the principal and interest may be made payable in equal instalments of a given amount, consisting partly of principal and partly of interest (*Linfoot* v. *Pockett*, [1895] 2 Ch. 835; *Mourmand* v. *Le Clair*, [1903] 2 K. B. 216). As to interest after sale, see *West* v. *Diprose*, [1900] 1 Ch. 337.

Where a bill of sale is absolutely void under sect. 9 of the Act of 1882 for non-compliance with the form, the covenant for payment, being part of the bill of sale, is void (*Davies* v. *Rees*, 17 Q. B. D. 408). But where a bill of sale comprises not only personal chattels but also other chattels not within the definition of "personal chattels" in the Bills of Sale Act, 1878, and is void as to the personal chattels for non-compliance with the form, it is not necessarily void as to the other property comprised in it. See *Re Burdett*, 20 Q. B. D. 310, in which *Davies* v. *Rees*, *ubi sup.*, is explained; *Re Isaacson*, [1895] 1 Q. B. 333; and cf. *National Bank of Australasia, Ltd. and J. Falkingham & Sons*, [1902] A. C. 585. And see *Mumford* v. *Collier*, 25 Q. B. D. 279.

condition of the said premises, and of any want of repair or dilapidation, to give to, or leave for, the said A. B., notice in writing, and upon such notice being given or left, the matter complained of shall be forthwith amended by the said A. B. AND FURTHER, that the said A. B. will, during the continuance of this security, keep the said premises and all other articles for the time being subject thereto, insured against loss or damage by fire, in the sum of £——at the least, and will produce, on demand, the receipt for the current year's premium for such insurance. AND will expend all monies received by virtue of any such insurance in replacing or restoring the articles destroyed or damaged [*and that in default mortgagee* may *insure, referring to the premises as "assigned,"* supra, p. 264] (*a*). PROVIDED ALWAYS that the chattels hereby

and to insure against damage by fire;

and to expend insurance monies in replacing articles destroyed or damaged.

(*a*) The form given in the schedule to the Act of 1882 does not contain or expressly authorise the insertion of a power of sale; and it is considered that, regard being had to the decisions (see *Hetherington* v. *Groome*, 13 Q. B. D. 789), no such power should be expressed. It was held by the full Court of Appeal (diss. Fry, L. J.), in *Re Morritt*, 18 Q. B. D. 222, that under the Act of 1882 (see sect. 13) there is an implied power to sell the goods at the expiration of five days after they have been seized; that the power of sale conferred by sect. 19 of the Conv. Act, 1881, is not required and is not incorporated in bills of sale subject to the Act of 1882; and (notwithstanding some expressions of opinion in *Watkins* v. *Evans*, 18 Q. B. D. 386) this view of the law is confirmed by *Calvert* v. *Thomas*, 19 Q. B. D. 204. And see generally as to the power of sale of a mortgagee of personal chattels, *Deverges* v. *Sandeman, Clark & Co.*, [1902] 1 Ch. 579.

As to the power of sale.

A provision exonerating any purchaser from inquiring whether default had been made in payment was held to avoid the bill of sale in *Blaiberg* v. *Parsons*, 17 Q. B. D. 336, and *Blaiberg* v. *Beckett*, 18 Q. B. D. 96.

The implied power of sale carries with it implied trusts to retain out of the sale monies the principal and interest owing, and also costs and expenses incurred in entry, in discharging any distress, execution, or other incumbrance affecting the goods, in seizing and keeping possession of them and in their removal, warehousing, valuation, and sale; and therefore such trusts may be expressly

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assigned shall not be liable to seizure, or to be taken possession of by the said C. D., for any cause other than those specified in sect. 7 of the Bills of Sale Act (1878) Amendment Act, 1882 (*a*). IN WITNESS, &c.

Signed and sealed by the said A. B. in the presence of me E. F. (*add witness's name, address, and description*).

THE SCHEDULE above referred to.

set forth in the deed (*Consolidated Credit, &c. Corp.* v. *Gosney*, 16 Q. B. D. 24; *Ex parte Rawlings*, 18 Q. B. D. 489; see *Lumley* v. *Simmons*, 34 Ch. D. 698). But, though such provisions may be harmless, it seems best to omit them as superfluous.

The bill of sale is, however, avoided if the powers are too wide, *e.g.* to pay and retain expenses attending the sale "*or otherwise* incurred in relation to the security" (*Calvert* v. *Thomas*, 19 Q. B. D. 204); or that the grantee may retain his commission as auctioneer (*Furber* v. *Cobb*, 18 Q. B. D. 494); or that he may have the goods valued and may purchase them at such valuation (*Lyon* v. *Morris*, 19 Q. B. D. 139).

As to the effect of a sale under the power in putting an end to the bill of sale, see *Cookson* v. *Stone*, 9 App. Cas. 653.

As to causes of seizure.

(*a*) This clause so expressed is contained in the form in the schedule to the Act of 1882. The causes are stated in sect. 7 of the Act and are:—(1), If the grantor shall make default in payment of the sum or sums of money thereby secured at the time therein provided for payment, or in the performance of any covenant or agreement contained in the bill of sale and *necessary* (not "convenient or useful" to the grantee; *Bianchi* v. *Offord*, 17 Q. B. D. 484, 487), for maintaining the security (see *Furber* v. *Cobb*, 18 Q. B. D. 494, 503, 509); (2), If the grantor shall become a bankrupt, or suffer the said goods or any of them to be distrained for rent, rates, or taxes; (3), If the grantor shall fraudulently (see *Furber* v. *Cobb*, 18 Q. B. D. 494, 505) either remove or suffer the said goods or any of them to be removed from the premises; (4), If the grantor shall not, without reasonable excuse (see *Ex parte Cotton*, 11 Q. B. D. 301; *Ex parte Wickens*, [1898] 1 Q. B. 543), upon demand in writing (not verbal; *Davis* v. *Burton*, 11 Q. B. D. 537, 542) by the grantee produce to him his last receipts for rent, rates, and taxes; and (5), If execution shall have been levied against the goods of the grantor under any judgment at law. But

the grantor may, within five days from the seizure or taking possession of any chattels on account of any of the above-mentioned causes, apply to the High Court or to a Judge thereof in chambers, and such Court or Judge, if satisfied that by payment of money or otherwise the said cause of seizure no longer exists, may restrain the grantee from removing or selling the said chattels, or may make such other order as may seem just (see *Ex parte Cotton, ubi sup.;* and *Ex parte Ellis*, [1898] 2 Q. B. 79). When the right to seize has arisen the grantor has no action of trespass or other common law action against the grantee for seizing the goods, for the right to possession is in the grantee, and the only thing left to the grantor is his right to redeem (*Johnson* v. *Diprose*, [1893] 1 Q. B. 512). Sect. 7 renders it unnecessary to insert express powers of seizure, and they are better omitted (see *Re Morritt*, 18 Q. B. D. 222). Under sect. 13, personal chattels seized or taken possession of under any bill of sale are not to be removed or sold until after the expiration of five days from the seizure or taking possession.

As to additions to statutory form.

The statutory form suggests the insertion of "terms as to insurance, payment of rent, or otherwise, which the parties may agree to for the maintenance or defeasance of the security." The term "defeasance" in this connection has been held to mean "realization"; *Consolidated Credit, &c. Corp.* v. *Gosney*, 16 Q. B. D. 24. See also as to what is a "defeasance," *Ex parte Popplewell*, 21 Ch. D. at p. 31; *Blaiberg* v. *Beckett*, 18 Q. B. D. 96; *Heseltine* v. *Simmons*, [1892] 2 Q. B. 547. The "defeasance" must be contained in the registered bill of sale: *Pettitt* v. *Lodge*, [1908] 1 K. B. 744.

It has been remarked by Lindley, L. J. (*Davis* v. *Burton*, 11 Q. B. D. 537, 541), that the statutory form is framed with reference to the provisions of sect. 7 (see also 13 App. Cas. p. 516); and having regard to sect. 9 of the Act of 1882, which avoids bills of sale not made in accordance with the form, the general rule for determining what additions may safely be made to the statutory form appears to be that only such covenants or provisions should be inserted as can be properly said to be "for the maintenance or defeasance of the security"; and further, that any covenant or provision inserted, even though it fall within the permitted class as thus defined, must not be so framed as either expressly or by implication to carry with it a power upon breach of it to seize or take possession of the goods, unless it be a provision "*necessary* for maintaining the security," within the meaning of sect. 7 (1) of the Act of 1882, or to be of such a nature that its breach would give rise to some cause of seizure specified in that section. A bill of sale containing any provision which does not satisfy both these conditions is likely to be held

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absolutely void under sect. 9; and it has been laid down that this result is not prevented by the insertion of the express provision, in the terms of the statutory form, limiting the power of seizure to causes specified in sect. 7 (see *Ex parte Pearce*, 25 Ch. D. 656; *Ex parte Stanford*, 17 Q. B. D. 259, 270; *Bianchi* v. *Offord*, *ibid.* 484; *Furber* v. *Cobb*, 18 Q. B. D. 495, 507; *Real and Personal Advance Co.* v. *Clears*, 20 Q. B. D. 304).

It has, however, been judicially stated, that a bill of sale will not necessarily be avoided by the insertion of terms agreed to for the maintenance of the security, although not "necessary for maintaining the security," provided that no power is given to seize or take possession of the goods for breach of such terms (*Topley* v. *Corsbie*, 20 Q. B. D. 350; and see *per* Lord Esher, M. R., *Ex parte Stanford*, 17 Q. B. D. at p. 264). But it must be remembered that there is a danger in the mere prolixity or elaboration arising from the insertion of numerous provisions, even though each of them taken by itself may be unobjectionable (see *ante*, pp. 336, 337, nn.).

Examples of provisions held not to invalidate bill of sale.

The following provisions have been held not to invalidate the bill of sale:—Covenants to pay insurance premiums, or rent, rates, and taxes, and produce receipts (*Cartwright* v. *Regan*, [1895] 1 Q. B. 900), that the grantee on default of the grantor may pay premiums or rent, rates, and taxes, and that such payments shall be a charge on the goods (*Hammond* v. *Hocking*, 12 Q. B. D. 291; *Ex parte Stanford*, 17 Q. B. D. 259; *Goldstrom* v. *Tallerman*, 18 Q. B. D. 1; *Watkins* v. *Evans*, *ibid.* 386; *Furber* v. *Cobb*, *ibid.* 494; but the bill of sale will be void if power, express or implied, is conferred to seize for breach of such covenant, or for recovery of such payments; *Bianchi* v. *Offord*, 17 Q. B. D. 484; *Real and Personal Advance Co.* v. *Clears*, 20 Q. B. D. 304, where the monies were "to be recoverable in the same manner as" the sums secured; *Topley* v. *Corsbie*, *ibid.* 350; and see *Macey* v. *Gilbert*, 57 L. J. Q. B. 461, where the sums in question were to be "added to and form part of the security"; and *Turner* v. *Culpan*, 36 W. R. 278; *Re Bullock*, [1899] 2 Q. B. 517; a covenant not to remove chattels likely to be damaged by removal (*Ex parte Payne*, 56 L. T. 571); a covenant to replace articles worn out (*Consolidated Credit, &c. Corp.* v. *Gosney*, 16 Q. B. D. 24; at all events as against the grantor; *Furber* v. *Cobb*, 18 Q. B. D. 494; and even though power be given to seize for breach, *ibid.*; and these decisions are not inconsistent with the principle of *Thomas* v. *Kelly*, 13 App. Cas. 506; see *Seed* v. *Bradley*, [1894] 1 Q. B. 319; *Coates* v. *Moore*, [1903] 2 K. B. 140); a covenant not to remove the chattels, even omitting the qualification "fraudulently" (see sect. 7 (3) of the Act of 1882; *Furber* v. *Cobb*, *ubi sup.*; *Ex parte Pope*,

60 L. T. 428; but see *Ex parte Pearce*, 25 Ch. D. 656); a power to seize if the grantee should do or suffer anything whereby he should become a bankrupt (*Ex parte Allam*, 14 Q. B. D. 43; *Ex parte Pope*, *ubi sup.*; but *secus* where the words were "become *liable* to be made bankrupt"; *Davis* v. *Burton*, 11 Q. B. D. 537; *Ex parte Pearce*, 25 Ch. D. 626); or "take the benefit of any Bankruptcy Act" (*Gilroy* v. *Bowey*, 59 L. T. 223): a covenant for further assurance by the grantor and persons "claiming under him" (*Ex parte Rawlings*, 18 Q. B. D. 489; but *secus* where the covenant was extended to "every other person claiming any interest"; *Liverpool, &c. Co.* v. *Richardson*, 30 Sol. J. 433). In the Editors' opinion it is better to omit any covenant for further assurance.

Examples of provisions held to invalidate bill of sale.

The bill of sale has been held to be invalidated by the insertion of covenants by the grantor to pay all interest on any mortgages of the premises on which the goods were or should at any time be; and that the bill of sale should be retained by the grantee after payment off (*Watson* v. *Strickland*, 19 Q. B. D. 391); and by the insertion of covenants for the purpose of securing to the grantee a portion of the grantor's custom (*Peace* v. *Brookes*, [1895] 2 Q. B. 451). And it must contain the whole transaction, and show the whole contract on its face (*Sharp* v. *McHenry*, 38 Ch. D. 427, 453); therefore it is invalid if it contains a covenant to perform the covenants in a recited indenture, such covenants not being set forth in the bill itself (*Lee* v. *Barnes*, 17 Q. B. D. 77); or where a separate promissory note is given by the grantor, such a note being a "defeasance" which by sect. 10 (3) of the Act of 1878 must be contained in the bill of sale (*Counsell* v. *London and Westminster Discount Co.*, 19 Q. B. D. 512; see *Simpson* v. *Charing Cross Bank*, 34 W. R. 568; but the note is valid; *Monetary Advance Co.* v. *Cater*, 20 Q. B. D. 785). So, where, the bill reserving simple interest, there was a contemporaneous agreement in another document not referred to in the bill and not registered as a bill of sale, for the payment of compound interest, the bill of sale was held void under sect. 10 (3) of the Act of 1878 (*Edwards* v. *Marcus*, [1894] 1 Q. B. 587, following *Counsell* v. *London and Westminster Discount Co.*, *ubi sup.*). And in considering whether a "defeasance" or condition is within the above-mentioned sub-section it makes no difference whether it is in favour of the grantor or the grantee (S. C.). But a policy of assurance deposited as collateral security is no condition or defeasance (*Carpenter* v. *Deen*, 23 Q. B. D. 566).

The present Precedent is believed not to have been affected by any of the various decisions adverted to, and remains as it stood in the thirteenth edition of this work; but it has been thought well

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to give also (as Precedent LXXVIII.) an exact copy of the statutory form.

As to attestation and registration.

The deed, to be effectual, must, under sect. 8 of the Act of 1882, be duly attested, and must, "within seven clear days after the execution thereof, or, if it is executed out of England, then within seven clear days after the time at which it would in the ordinary course of post arrive in England if posted immediately after the execution thereof," be registered (in the Central Office; see R. S. C. 1883, Ord. LXI.) in accordance with sect. 10 of the Act of 1878; and under sect. 11 of the same Act, such registration must be renewed once at least every five years. The effect of omitting to re-register is, since the Act of 1882, to make the bill wholly void even as between grantor and grantee (*Fenton* v. *Blythe*, 25 Q. B. D. 417), and although the Court has power under sect. 14 to give leave to re-register after the time has expired, it will not do so after a third person (*e.g.*, the trustee in bankruptcy of the grantor) has acquired an interest in the goods (*In re Parsons*, [1893] 2 Q. B. 122).

Sect. 10 (1) of the Act of 1878, which required attestation by a solicitor, is repealed by the Act of 1882, s. 10, which enacts instead that "the execution of every bill of sale by the grantor shall be attested by one or more credible witness or witnesses not being a party or parties thereto." (But the repeal does not apply to absolute bills of sale: *Casson* v. *Churchley*, 53 L. J. Q. B. 335.) The agent of a grantee may be a witness (*Peace* v. *Brookes*, [1895] 2 Q. B. 451). It has been held that the omission of the addresses and descriptions of the attesting witnesses renders the bill of sale void (*Parsons* v. *Braud*, 25 Q. B. D. 110; *Sims* v. *Trollope*, [1897] 1 Q. B. 24); as to what is a sufficient address and description of an attesting witness, see *Bird* v. *Davey*, [1891] 1 Q. B. 29; *Simmons* v. *Woodward*, [1892] A. C. 100. The affidavit required by sect. 10 (2) of the Act of 1878 must not be sworn before the solicitor acting for the grantee (*Baker* v. *Ambrose*, [1896] 2 Q. B. 372); it should state the residence (see *Greenham* v. *Child*, 24 Q. B. D. 29, cited *supra*, p. 337) of the grantor at the date of swearing; see the form in R. S. C. 1883, App. B. 24 (the similar form then in force seems to have been overlooked in *Ex parte Kahen*, 21 Ch. D. 871); but the affidavit on re-registration must follow the description in the bill of sale, though erroneous (*Ex parte Webster*, 22 Ch. D. 136).

As to local registration.

The Act of 1882 (sect. 11) provides for legal registration where the grantor is described as residing or the chattels as being in some place outside the London Bankruptcy district (see R. S. C. Dec. 1883, as to local registration); but the want of local registration

LXXVIII.

Statutory *form of* Bill of Sale (*a*).

Precedent LXXVIII.

Bill of Sale. Statutory.

THIS INDENTURE, made the —— day of ——, between A. B., of ——, of the one part, and C. D., of ——, of the other part, witnesseth, that, in consideration of the sum of £—— now paid by A. B. to C. D., the receipt of which the said A. B. hereby acknowledges [*or whatever else the consideration may be*], he the said A. B. doth hereby assign unto C. D., his executors, administrators, and assigns, all and singular the several chattels and things specifically described in the schedule hereto annexed by way of security for the payment of the sum of £—— and interest thereon at the rate of —— per cent. per annum [*or whatever else may be the rate*]. And the said A. B. doth further agree and declare that he will duly pay to the said C. D. the principal sum aforesaid, together with the interest then due, by equal —— pay-

does not avoid the bill of sale; *Trinder* v. *Raynor*, 56 L. J. Q. B. 522.

As to priorities.

Two or more bills of sale comprising the same chattels have, under sect. 10 (4) of the Act of 1878, priority according to the dates of their registration; see *Conelly* v. *Steer*, 7 Q. B. D. 520; *Lyons* v. *Tucker*, *ibid.* 523. But a bill of sale of goods already assigned by an unregistered deed, and delivered to the assignee, is void under sect. 5 of the Act of 1882 against all persons except the grantor, he not being the true owner; see *Tuck* v. *Southern Counties Deposit Bank*, 42 Ch. D. 471. A memorandum of equitable submortgage given by the transferee of a registered bill of sale does not require registration (*Ex parte Turquand*, 14 Q. B. D. 636).

The evasion of the Act by substituting a fresh bill for an unregistered bill within the time allowed for registration, which was practicable under the Act of 1854 (see Dav. Prec. Conv. vol. ii. pt. ii. 4th ed. 158), is prevented by sect. 9 of the Act of 1878.

A bill of sale may be executed by an attorney, who may be the grantee himself (*Furnivall* v. *Hudson*, [1893] 1 Ch. 335).

(*a*) See notes to Precedent LXXVII.

PRECEDENT LXXVIII.

BILL OF SALE. STATUTORY.

ments of £—— on the —— day of —— [*or whatever else may be the stipulated times or time of payment*]. AND the said A. B. doth also agree with the said C. D., that he will [*here insert terms as to insurance, payment of rent or otherwise, which the parties may agree to for the maintenance or defeasance of the security*]. PROVIDED ALWAYS, that the chattels hereby assigned shall not be liable to seizure, or to be taken possession of by the said C. D. for any cause other than those specified in section 7 of the Bills of Sale Act (1878) Amendment Act, 1882. IN WITNESS, &c.

Signed and sealed by the said A. B. in the presence of me, E. F. [*add witness's name, address, and description*].

LXXIX.

PRECEDENT LXXIX.

SUBMORTGAGE.

SUBMORTGAGE *of a* MORTGAGE *of* FREEHOLDS (*a*).

Parties.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*mortgagor*] (hereinafter referred to as the submortgagor), of the one part, and B., of, &c. [*mortgagee*] (hereinafter referred to as the submortgagee), of the other part.

Recital of mortgage:

WHEREAS, by an indenture dated the —— day of ——, and expressed to be made between C. [*original mortgagor*], of the one part, and the submortgagor of the other part, in consideration of £1,000 to the said C. paid by the submortgagor, the said C. granted unto the submortgagor, his heirs and assigns, certain messuages, lands, and other

(*a*) As to submortgages, see Davidson's Prec. Conv. vol. ii. pt. ii. 4th ed. pp. 138—141. In the editions previous to the passing of the Conv. Act, 1881 (App. IV., *infra*), no power of sale of the mortgage debt and the securities was inserted in this Precedent, it being considered that such a power was not desirable. But under that Act (see sect. 19), such a power will be necessarily incident to the security, and, unless the submortgagor expressly so stipulates, the statutory powers should not be negatived.

PRECEDENT LXXIX.

SUBMORTGAGE.

hereditaments situate at ——, and therein particularly described with the appurtenances as therein mentioned (*a*) to hold the same unto and to the use of the submortgagor, his heirs and assigns, subject to a proviso for redemption on payment by the said C., his heirs, executors, administrators, or assigns, unto the submortgagor, his executors, administrators, or assigns, of the sum of £1,000 with interest after the rate and at the time therein mentioned: And in the indenture now in recital were contained usual covenants by the said C. for payment of principal and interest [and power of sale (*b*)]. AND WHEREAS the said sum of £1,000 with interest from the —— day of —— last, is now owing on the security of the hereinbefore recited indenture. AND WHEREAS the submortgagee has agreed to lend the submortgagor the sum of £500 upon having the repayment thereof with interest, as hereinafter mentioned, secured in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of £500 to the submortgagor this day paid by the submortgagee (the receipt whereof the submortgagor doth hereby acknowledge), the submortgagor, AS BENEFICIAL OWNER (*c*), doth hereby assign unto

that principal and interest are now owing:

of agreement for loan.

Witnesseth.

(*a*) In the recital in a submortgage of the original mortgage, it is generally not necessary to set out at length the parcels of the mortgage, as the submortgage purports to pass only the property, whatever it may be, comprised in the mortgage, and must necessarily be always read in connexion with the mortgage. The same remark applies to the recital of a mortgage in a reconveyance, or in a transfer, to which the mortgagor is not a party.

(*b*) Of course the reference to the power of sale will be omitted, if there be none in the mortgage.

(*c*) It is conceived that the submortgagor may properly be described as beneficial owner of the mortgage debt and security, though not of the mortgaged property, and that the covenants, which will thus be implied, under sect. 7 (1), C. and F. of the Conv. Act, 1881, will supply all such covenants as need be required on behalf of the submortgagee. If, however, express covenants

PRECEDENT LXXIX.

SUBMORTGAGE.

the submortgagee, ALL THAT the said sum of £1,000 now owing to the submortgagor on the security aforesaid, and all interest due and to accrue due for the same, and the full benefit of the [power of sale in the hereinbefore recited indenture contained, and of all other] securities for the same monies: TOGETHER WITH power for the submortgagee to use the name of the submortgagor for the purpose of demanding, suing for, recovering and giving receipts for the said principal sum of £1,000, and all interest due and to become due for the same, and for the purposes aforesaid, or any of them, to execute and do all such instruments and things as shall be deemed necessary or expedient (*a*), TO HOLD the premises unto the submortgagee. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and for the consideration aforesaid the submortgagor, as MORTGAGEE (*b*), doth hereby grant unto the submortgagee his heirs and assigns, ALL THE said messuages, lands, hereditaments, and premises, by the hereinbefore recited indenture expressed to be granted, TO HOLD the last-mentioned premises UNTO and TO THE USE OF the submortgagee, his heirs and assigns, subject to the equity of redemption

Transfer of mortgage debt.

Power of attorney.

Habendum.

Witnesseth, secondly.

Grant of mortgage hereditaments.

Habendum.

are inserted, these should be for right to assign, and for further assurance.

(*a*) The direct right of action now given to the *absolute* assignee of a debt by the Supreme Court of Judicature Act, 1873, s. 25, sub-s. 6 (see *supra*, p. 66, n. (*a*)), renders a power of attorney useless in such assignments, even of legal debts. But the assignment of a mortgage debt subject to redemption (as in a submortgage) has been decided to be an assignment "purporting to be by way of charge only," and therefore not within the sub-section (see *National Provincial Bank of England* v. *Harle*, 6 Q. B. D. 626); and though there can now be no doubt that the decision is wrong (see *Burlinson* v. *Hall*, 12 Q. B. D. 347; *Tancred* v. *Delagoa, &c. Co.*, 23 Q. B. D. 239; *Durham Bros.* v. *Robertson*, [1898] 1 Q. B. 765; *Comfort* v. *Betts*, [1891] 1 Q. B. 737; *Hughes* v. *Pump House Hotel Co.*, [1902] 2 K. B. 190; *Fitzroy* v. *Cave*, [1905] 2 K. B. 364) it has been thought best to retain the power in this Precedent.

(*b*) See *supra*, p. 353, n. (*c*).

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subsisting therein under the same indenture [and with the benefit of the power of sale therein contained]. PROVIDED ALWAYS, that if the submortgagor shall pay unto the submortgagee the said sum of £500 with interest for the same in the meantime, at the rate of £— per cent. per annum on the —— day of —— next, then the submortgagee will at any time thereafter, upon the request and at the cost of the submortgagor, re-assign and re-convey the said mortgage debt, mortgaged hereditaments and premises hereinbefore assigned and granted respectively unto the submortgagor, his executors, administrators and assigns, or as he or they shall direct, and as regards the said hereditaments in fee simple, and subject to such equity of redemption as aforesaid [*covenant for payment of principal and interest, and of interest after default, supra,* pp. 245, 246, *mutatis mutandis*]. PROVIDED ALWAYS, and it is hereby declared, that the submortgagee shall not be in any manner bound or concerned to enforce or realise the hereinbefore recited security, unless he should think fit, and shall not be answerable for any loss occasioned by delay or omission so to do, or otherwise, in relation to such security, nor shall this present security be prejudiced or affected by such delay or omission, [AND IT IS HEREBY FURTHER DECLARED, that the submortgagee shall, out of any monies to be received by him in or towards satisfaction of the said mortgage debt of £1,000 and interest, whether upon sale under the power of sale contained in the hereinbefore recited indenture (*b*) or under the statutory power in that behalf or otherwise, in the first place pay the expenses incurred in obtaining payment thereof or otherwise in relation to the premises; and in the next place apply such monies in or towards satisfaction of the monies for the time being

Proviso for redemption.

Submortgagee not to be bound to enforce original security.

Trusts of monies received under original security (*a*).

(*a*) This clause may probably be omitted with safety. See the Conv. Act, 1881, sect. 22 (App. IV., *infra*).

(*b*) See *supra*, p. 353, n. (*b*).

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owing on the security of these presents, and then pay the surplus (if any) of the monies so received unto the submortgagor] [*Mortgagee's indemnity clause, supra*, p. 246. *Interpretation clause*, p. 240, *substituting* "submortgagor" *for* "mortgagor" *and* "submortgagee" *for* "mortgagee."] IN WITNESS, &c. (*a*).

LXXX.

PRECEDENT LXXX.

TRANSFER BY INDEPENDENT DEED.

TRANSFER *of a* MORTGAGE *of* FREEHOLDS *by* INDEPENDENT *or* SUPPLEMENTAL DEED, *the* MORTGAGOR *not being a* PARTY.

Parties.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. (hereinafter called the transferor (*b*)) [*mortgagee*], of the one part, and B., of, &c. [*transferee*] (hereinafter called the transferee), of the other part.

Recital of mortgage;

WHEREAS, &c. [*recital of the mortgagee, ut supra*, p. 352, *putting* "transferor" *for* "submortgagor" (*c*)].

—that prin-

AND WHEREAS the said sum of

(*a*) Notice of this submortgage must be given to the original mortgagor to prevent the submortgagee from being prejudiced by any dealings between the original mortgagor and mortgagee. See Davidson's Prec. Conv., vol. ii. pt. ii. 4th ed. p. 138; *Cavendish* v. *Geaves*, 24 Bea. 163; *Withington* v. *Tate*, L. R. 4 Ch. 288; *Banfather's Claim*, 16 Ch. D. 178; *Dixon* v. *Winch*, [1900] 1 Ch. 736.

(*b*) Or "mortgagee."

(*c*) If the transfer be by supplemental deed, substitute for this recital a reference to the mortgage, thus:—

"these presents are supplemental to an indenture (hereinafter referred to as the principal indenture) dated the —— day of ——, 19—, and expressed to be made between [*parties*] whereby certain hereditaments situate at ——, were conveyed to the transferor by way of mortgage for securing £—— and interest."

PRECEDENT LXXX.

TRANSFER BY INDEPENDENT DEED.

£——, with £—— for interest thereon from the —— day of —— last, is now owing to the transferor on the said security. AND WHEREAS the transferee has agreed to pay to the transferor the said sums of £—— and ——, making together the sum of £——, upon having such transfer of the said mortgage debt and of the securities for the same, as is hereinafter contained. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of £—— this day paid to the transferor by the transferee (the receipt whereof the transferor doth hereby acknowledge), he the transferor, as MORTGAGEE (*a*), doth hereby assign unto the transferee, his executors, administrators and assigns, ALL THAT the said sum of —— [*the principal*] now owing to the transferor on the security aforesaid, and all interest due and to accrue due for the same, AND the full benefit of and right to enforce and exercise all covenants, powers, and remedies in the hereinbefore recited (*b*) indenture contained or by statute implied, or thereby in any manner given or created for recovering and compelling payment of the said principal sum and interest, and the full benefit also of all other securities for the same (*c*), TO HOLD the premises unto the transferee, his executors, administrators, and assigns absolutely. AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agreement, and for the consideration aforesaid, the transferor, AS MORTGAGEE,

cipal and certain interest is now owing;

—of agreement for transfer.

Witnesseth.

Consideration.

Receipt.

Assignment of debt.

Habendum.

Witnesseth, secondly.

The words "hereinafter referred to as the principal indenture," are commonly used, but of course they are not necessary, and if they are omitted the indenture would, in the subsequent parts of the draft, be referred to in the usual way as "the said indenture of mortgage," or "the said indenture of the —— day of ——."

(*a*) The use of these words implies a covenant against incumbrances on the part of the mortgagee. See the Conv. Act, 1881 (Appendix IV., *infra*), sect. 7 (1) (F).

(*b*) Or "principal."

(*c*) See p. 354, n. (*a*), *supra*.

PRECEDENT LXXX.

TRANSFER BY INDEPENDENT DEED.

doth hereby grant unto the transferee, his heirs, and assigns, ALL THE said hereditaments and premises by the hereinbefore recited (*a*) indenture — expressed to be granted [*or* "released," *or* "appointed," *or* "appointed and granted," *&c., as the case may be*]; TO HOLD the last-mentioned premises UNTO and TO THE USE of the transferee, his heirs and assigns, SUBJECT to the equity of redemption subsisting therein under the hereinbefore recited (*a*) indenture. IN WITNESS, &c. (*b*).

Conveyance.
Parcels.
Habendum.

LXXXI.

PRECEDENT LXXXI.

TRANSFER BY INDORSEMENT.

TRANSFER *by* INDORSEMENT *of a* MORTGAGE *of* FREEHOLDS (UPON *an* APPOINTMENT *of* NEW TRUSTEES), *the* MORTGAGOR *not being a* PARTY.

Parties.

THIS INDENTURE, made, &c., BETWEEN the within-named A. and B. [*surviving mortgagees*] (hereinafter called the transferors), of the one part, and D., of, &c., E., of, &c., and F., of, &c. [*transferees*] hereinafter called the transferees), of the other part. WHEREAS the within-named G. died on the —— day of ——, 19—. AND WHEREAS the within-mentioned sum of £——, together with the interest thereon from the —— day of —— last, is now owing to the transferors on the security of the within written indenture, and the same now belongs in equity to the transferees, on a joint account, and the transferors have agreed to execute such transfer of the said mortgage debt, and interest, and the securities for the same, as is hereinafter contained (*c*). NOW THIS

Recital of death of one mortgagee;
that mortgage debt with interest remains owing,
and belongs to the transferees;
and of agreement for transfer.
Witnesseth.

(*a*) Or "principal."

(*b*) Notice of this transfer should be given to the mortgagor, see n. (*a*), at p. 356, *supra*.

(*c*) This form of recital is appropriate when it is not desired to disclose the nature of the title to the mortgage money, *e.g.*, when a

PRECEDENT LXXXI.

TRANSFER BY INDORSEMENT.

INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the premises, THEY the transferors, AS MORTGAGEES, do, and each of them doth hereby assign unto the transferees, their executors, administrators, and assigns, ALL THAT principal sum of £—— now owing on the security of the within-written indenture, and all interest due, and to grow due thereon, AND the benefit of all securities for the same (*a*), TO HOLD the premises unto the transferee, their executors, administrators, and assigns, for their own benefit. AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agreement, and for the consideration aforesaid, THEY the transferors, AS MORTGAGEES, do, and each of them doth hereby grant unto the transferees, their heirs and assigns, ALL THE hereditaments and premises comprised in, and expressed to be granted [*or* "released," *or* "appointed," *or* "appointed and granted," *&c., as the case may be*] by the within-written indenture: TO HOLD the last-mentioned premises UNTO and TO THE USE of the transferees, their heirs and assigns, SUBJECT to the equity of redemption subsisting therein under the within-written indenture [on payment to the transferees, or the survivors or survivor of them, or the executors or administrators

Consideration.

Assignment of debt.

Witnesseth, secondly.

Conveyance.

Parcels.

Habendum.

To use of transferees; subject to subsisting equity of redemption.

mortgage on which trust money has been invested, is transferred on an appointment of new trustees. See *Re Harman and Uxbridge and Rickmansworth Railway Co.*, 24 Ch. D. 720; *Carritt* v. *Real and Personal Advance Co.*, 42 Ch. D. 263, in which it seems to have been assumed that such recitals are of ordinary occurrence in documents not connected with mortgages. And cf. *Re Blaiberg and Abrahams*, [1899] 2 Ch. 340, where the trusts were disclosed. A form of transfer of a mortgage to trustees in contemplation of a settlement, framed so as to render the concurrence of the *cestui que trusts* thereunder unnecessary in future dealings with the mortgaged property, will be found *infra*. See also the Precedent of a declaration of trust of a contributory loan, *infra*.

(*a*) See *supra*, p. 354, n. (*a*); and compare the form of assignment, *supra*, p. 357.

PRECEDENT LXXXI.

TRANSFER BY INDORSEMENT.

of such survivor, their or his assigns, of the said sum of £——, and all interest due and to accrue due thereon (*a*)]. IN WITNESS, &c. (*b*).

LXXXII.

PRECEDENT LXXXII.

TRANSFER WITH COVENANT FOR PAYMENT BY MORTGAGOR.

TRANSFER (*by* INDEPENDENT *or* SUPPLEMENTAL DEED) *of a* MORTGAGE *of* FREEHOLDS, *the* EQUITY *of* REDEMPTION *having been* INCUMBERED, *and the* OWNER *being a* PARTY *and* COVENANTING *for* PAYMENT *of the* MORTGAGE DEBT *and* INTEREST (*c*).

Parties.

THIS INDENTURE, made, &c., BETWEEN A., of, &c., [*mortgagee*] (hereinafter called the transferor), of the first part, B., of, &c. [*owner of equity of redemption*], of the second part, and D., of, &c., and E., of, &c. [*transferees*] (hereinafter called the transferees), of the third part:

Recital of mortgage;

WHEREAS, by an indenture dated the —— day of ——, and expressed to be made between M. [*original mortgagor*], of the one part, and N. [*original mortgagee*], of the other part, the said M. granted the several messuages, farms, lands, tenements, and hereditaments, commonly called the —— estate, situate in the parish of ——, in the county of ——, and containing together by estimation —— (more or less), all which said premises were more particularly described in the schedule thereunto annexed, unto and to the use of the said N., his heirs and assigns, subject to a proviso for redemption on payment by the

(*a*) See p. 363, *infra*, n. (*b*).

(*b*) Notice of this transfer should be given to the mortgagor; see n. (*a*) at p. 356, *supra*.

(*c*) There is no substantial reason why the present form should not be adopted, where the equity of redemption has not been incumbered, but in that case it is more usual to frame the transfer in the form of Precedent LXXXIII.

PRECEDENT LXXXII.

TRANSFER WITH COVENANT FOR PAYMENT BY MORTGAGOR.

—of transfers:

said M., his heirs, executors, administrators, or assigns, to the said N., his executors, administrators, or assigns, of the sum of £—— with interest at the rate of —— per cent. per annum, on the day therein mentioned: AND WHEREAS after a mesne transfer [divers mesne transfers and acts in the law], ultimately by virtue of an indenture dated, &c., and expressed to be made between [*parties*] the said mortgage debt of £—— and the interest thereon, and the securities for the same (*a*) were transferred to and

(*a*) Add if appropriate "other than and except certain hereditaments which had been released and disposed of as in the same indenture is mentioned." If the deed be supplemental, substitute for the preceding recitals the following:—

Supplemental to mortgage, transfer, and settlement, and disentailing assurance

"WHEREAS these presents are supplemental to the following indentures (that is to say) (1) an indenture dated the —— day of ——, and expressed to be made between [*parties*], being a mortgage of the —— estate in the county of —— for securing £—— and interest; (2) an indenture dated the —— day of ——, and expressed to be made between [*parties*], being a transfer of the said mortgage debt and interest, and the securities for the same; (3) an indenture dated the —— day of ——, and expressed to be made between [*parties*], being a transfer of the said mortgage debt and interest, and the securities for the same [except certain hereditaments which had been released and disposed of as therein mentioned] (4) an indenture dated the —— day of ——, and expressed to be made between [*parties*], being a family settlement of the said estate and other property; and (5) an indenture of disentailing assurance, dated the —— day of ——, and expressed to be made between the said B. of the one part and X. of the other part."

If Nos. (4) and (5) are mentioned (which as a general rule may be regarded as unnecessary and undesirable), an acknowledgment and undertaking by B. for their production should be inserted at

PRECEDENT LXXXII.

TRANSFER WITH COVENANT FOR PAYMENT BY MORTGAGOR.

—of devolution of equity of redemption;

—that principal sum remains owing, but all interest has been paid;

of agreement for transfer.

Witnesseth.

Consideration.

Receipt.

Assignment of mortgage debt.

became vested in the transferor. AND WHEREAS the said B. is now absolutely entitled to the fee simple of the premises comprised in the said indenture of mortgage (*a*) subject to the mortgage made thereby, and subject to several subsequent incumbrances. AND WHEREAS the said sum of £—— is owing to the transferor, on the security of the said indenture of mortgage, but all interest for the same has been paid down to the date of these presents: AND WHEREAS the transferees have agreed, at the request of the said B., to pay to the transferor the sum of £—— upon having such transfer as is hereinafter contained of the said mortgage debt of £—— and interest and the securities for the same, and upon having the repayment of the same with interest after the rate hereinafter mentioned, further secured in manner hereinafter appearing: NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement and in consideration of £—— to the transferor this day paid by the transferees out of monies belonging to them on a joint account at the request of the said B. (the receipt whereof the transferor doth hereby acknowledge), He the transferor, AS MORTGAGEE, at the request of the said B., doth hereby assign unto the transferees, their executors, administrators, and assigns, ALL THAT the said principal sum of £—— so owing to the transferor on the aforesaid security as is hereinbefore mentioned, and the interest henceforth to become due for the same, and the full benefit of the power of sale in the said indenture of mortgage contained [by statute implied], and of all other powers, remedies, and securities for recovering and compelling payment of or

the end of the draft, and the next following recital should be omitted. It will be observed that little (if anything) is gained in a deed of this description by adopting the supplemental scheme.

(*a*) Add if appropriate "other than and except the said hereditaments which have been released and disposed of as aforesaid."

PRECEDENT LXXXII.

TRANSFER WITH COVENANT FOR PAYMENT BY MORTGAGOR.

otherwise securing the same, To HOLD the premises unto the transferees, their executors, administrators, and assigns, for their own benefit: AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and for the consideration aforesaid, He the transferor, AS MORTGAGEE, at the request of the said B., doth hereby grant unto the transferees, their heirs and assigns: ALL AND SINGULAR the messuages, farms, lands, tenements, and hereditaments, and premises in the said indenture of mortgage comprised or expressed to be thereby granted (*a*) and all other hereditaments (if any) which now, by virtue of any award, inclosure, or otherwise, are vested in the transferor, subject to redemption, by virtue of the said indenture of mortgage, To HOLD the last-mentioned premises UNTO and TO THE USE of the transferees, their heirs and assigns, SUBJECT to such right or equity of redemption as the said premises are now subject to by virtue of the said indenture of mortgage [on payment to the transferees or the survivor of them, or the executors or administrators of such survivor, their or his assigns, of the said sum of £——, and the interest henceforth to become due for the same (*b*)]: AND THE SAID B. doth hereby covenant with the transferees that he the said B., his heirs, executors, or administrators, will pay to the transferees, their executors, administrators, or assigns, on the —— day of —— next, the said sum of £——, with interest for the same in the meantime at the rate of £—— per cent. per annum: AND if the said sum of £—— or

Habendum;

—to transferees.

Witnesseth, secondly.

Grant.

Parcels.

Habendum:

—to transferees;

—subject to equity of redemption.

Covenants by owner for payment of mortgage debt and interest to the transferees.

(*a*) Add if appropriate "other than and except the said hereditaments which have been released and disposed of as aforesaid, and also (by way of further grant and not of exception)."

It is sometimes convenient to add a schedule of the released hereditaments, and to refer to such schedule at this point. But in the present case the last transfer (which would be delivered to the transferees) is supposed to indicate them sufficiently.

(*b*) These words are unnecessary, but occasionally convenient.

PRECEDENT LXXXII.

TRANSFER WITH COVENANT FOR PAYMENT BY MORTGAGOR.

any part thereof shall remain unpaid after that day, will, so long as the same sum or any part thereof shall remain unpaid, pay to the transferees, their executors, administrators or assigns, interest for the sum so remaining unpaid by equal half-yearly payments on the —— day of ——, and the —— day of —— (*a*). [*Covenant by mortgagor against registration if required, supra*, p. 246.] IN WITNESS, &c.

LXXXIII.

PRECEDENT LXXXIII.

TRANSFER WITH OR WITHOUT FURTHER ADVANCE TO MORTGAGOR. FREEHOLDS.

TRANSFER *of a* MORTGAGE *of* FREEHOLDS *by the* EXECUTORS *and* DEVISEES *of the* MORTGAGEE, *the* EQUITY *of* REDEMPTION NOT *having been* INCUMBERED. VARIATIONS *where the* MORTGAGOR *receives a* FURTHER ADVANCE (*b*).

Parties.

THIS INDENTURE, made, &c., BETWEEN A., of, &c., and B., of, &c. [*executors and devisees* (*c*) *of mortgagee*], of the first part, C., of, &c. [*mortgagor*] (hereinafter called the mortgagor), of the second part, and D., of, &c. [*transferee*] (hereinafter called the mortgagee), of the third part.

Recital of mortgage;

—of the will of the mortgagee;

WHEREAS, &c. [*recital of the mortgage, ut supra*, p. 146, *putting* "mortgagor" *for B., and the name of the original mortgagee for A.*]. AND WHEREAS the said [*original mortgagee*] duly executed his will, dated the —— day of ——, and thereby [devised all estates vested in him upon mortgage to the said A. and B., their heirs and assigns, and] appointed the said A. and B.

(*a*) If thought fit the representatives of the transferees may be omitted throughout, an interpretation clause being added as to them.

(*b*) Compare Precedent LXXXII., which, as there noticed, may be used instead of this form, unless the mortgagor receives a further advance.

(*c*) See notes to Precedent XIII., *supra*, p. 151.

PRECEDENT LXXXIII.

TRANSFER WITH OR WITHOUT FURTHER ADVANCE TO MORTGAGOR. FREEHOLDS.

executors of his said will (*a*). AND WHEREAS the said [*original mortgagee*] died without having revoked or altered his said will, and the same was proved by the said A. and B. in the —— Registry (*b*) on the —— day of ——. AND WHEREAS the said sum of £— — is now owing to the said A. and B. on the said security, but all interest thereon has been paid down to the date of these presents. AND WHEREAS the mortgagee has agreed to pay to the said A. and B. the said sum of £—— [and to lend the mortgagor the further sum of £——] upon having such transfer of the said mortgage debt and interest, and of the securities for the same, as hereinafter contained, and upon having the repayment of the said sum of [sums of £—— and] £—— with interest, as (*c*) hereinafter mentioned [secured and] further secured [respectively] in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH that, in pursuance of the said agreement, and in consideration of the sum of £—— [*original debt*] to the said A. and B. this day paid by the mortgagee (the receipt whereof the said A. and B. do hereby acknowledge) [and of the sum of £ — to the mortgagor this day paid by the mortgagee (the payment and receipt respectively of which sums of £—— and £——, making together the sum of £ ——, the mortgagor doth hereby acknowledge], they the said A. and B. AS MORTGAGEES do, and each of them doth, hereby assign unto the mortgagee, ALL THAT the said sum of £ — [*the original debt*] now owing to the said A. and B. on the security aforesaid, and all interest to accrue due in respect thereof, and the

—of his death and probate of his will;

—that mortgage money is still due;

—of agreement for transfer [and further advance].

Witnesseth.

Consideration.

Receipt.

Transfer of mortgage debt.

(*a*) If the death of the mortgagee happened after the 31st December, 1881, the transfer will be by the executors alone, and the reference to the devise of mortgage estates will be omitted. See sect. 30 of the Conv. Act, 1881 (App. IV., *infra*).

(*b*) See *supra*, p. 153, n. (*a*).

(*c*) Say, if so intended, "at the reduced rate" or "at the rate and reducible." In the latter case a proviso for reduction would be inserted as on p. 265, *supra*.

PRECEDENT LXXXIII.

TRANSFER WITH OR WITHOUT FURTHER ADVANCE TO MORTGAGOR. FREEHOLDS.

benefit of all securities for the same, TO HOLD the premises unto the mortgagee absolutely. AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agreement, and for the consideration[s] aforesaid, the said A. and B., AS MORTGAGEES, by the direction of the mortgagor, do and each of them doth, hereby grant, and he the mortgagor, AS BENEFICIAL OWNER, doth hereby grant and confirm, unto the mortgagee, his heirs and assigns [*parcels*, pp. 134, 138, &c.], TO HOLD the last-mentioned premises UNTO and TO THE USE of the mortgagee, his heirs and assigns, discharged from all equity of redemption under the said indenture of the —— day of —— [*the original mortgage*]. PROVIDED ALWAYS that if the mortgagor shall pay to the mortgagee the sum of £—— [(being the aggregate of the said sums of £—— and £——)], with interest for the same in the meantime at the rate of £—— per cent. per annum on the —— day of —— next, then the mortgagee will at any time thereafter upon the request and at the cost of the mortgagor, reconvey the said premises hereinbefore granted unto the mortgagor, his heirs or assigns, or as he or they shall direct. [*Covenant by mortgagor with transferee for payment of principal and interest, and of interest after default, ut supra*, pp. 245, 246. *Covenant by mortgagor against registration, supra*, p. 246. *Mortgagee's indemnity clause, supra*, p. 246. *Interpretation clause, supra*, p. 240] (*a*). IN WITNESS, &c.

Habendum.

Witnesseth, secondly.

Conveyance.

Habendum.

Proviso for redemption.

THE SCHEDULE above referred to.

(*a*) In Precedent XLVIII., *supra*, will be found some other clauses, the insertion of which might be desirable.

LXXXIV.

TRANSFER *of a* MORTGAGE *of* FREEHOLDS *and* LEASEHOLDS *by* INDORSEMENT, *the* MORTGAGOR *being a party. Part of the* DEBT *having been* PAID OFF, COPYHOLDS *originally comprised in the* MORTGAGE *are discharged therefrom* (*a*).

PRECEDENT LXXXIV.

TRANSFER BY INDORSEMENT, MORTGAGOR BEING A PARTY. FREEHOLDS AND LEASEHOLDS.

THIS INDENTURE, made the —— day of —, 19—, BETWEEN the within-named B. [*original mortgagee*] (hereinafter called the transferor), of the first part, the within-named A. [*mortgagor*] (hereinafter called the mortgagor), of the second part, and C., of, &c. [*transferee*] (hereinafter called the mortgagee), of the third part. WHEREAS, on the —— day of ——, the within-mentioned copyhold hereditaments, held of the manor of ——, were in pursuance of the covenant for that purpose in the within-written indenture contained, surrendered into the hands of the lord of the said manor, subject to a condition for making void the surrender corresponding to the proviso for redemption in the within-written indenture contained. AND WHEREAS all interests for the within-mentioned sum of £—— has been paid down to the date of these presents, and the sum of £—— has been paid by the mortgagor to the transferor, in part discharge of the said sum of £——, so that £—— only remains owing to the transferor on the security of the within-written indenture. AND WHEREAS the mortgagee has, at the request of the mortgagor, agreed to pay to the transferor the sum of £—— [*the reduced debt*], upon having such transfer as is hereinafter contained of the said mortgage debt of £—— remaining owing on the security of the within-written indenture, and the securities for the same except

Parties.

Recital of surrender of copyholds.

Recital that all interest and part of the principal has been paid.

Of agreement for transfer except as to copyholds.

(*a*) The mortgage to the transfer of which this Precedent relates is that given in Precedent LVIII., *supra*, p. 273.

PRECEDENT LXXXIV.

TRANSFER BY INDORSEMENT, MORTGAGOR BEING A PARTY. FREEHOLDS AND LEASEHOLDS.

the said copyhold hereditaments, as to which it is intended that satisfaction shall be entered upon the conditional surrender thereof, to the intent that the same premises may be wholly discharged from all monies intended to be secured by the within-written indenture. Now THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of £——, at the request of the mortgagor, this day paid to the transferor by the mortgagee (the receipt whereof the transferor doth hereby acknowledge), HE the transferor AS MORTGAGEE doth hereby assign unto the mortgagee, ALL THAT the said principal sum of £ —— [*the reduced debt*], now remaining owing to the transferor on the security of the within-written indenture as aforesaid, and the interest henceforth to grow due for the same, and the benefit of all securities for the same, TO HOLD the premises unto the mortgagee, his executors, administrators, and assigns. AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the said agreement, and for the consideration aforesaid, HE, the transferor, AS MORTGAGEE, at the request of the mortgagor, doth hereby grant, and he the mortgagor as BENEFICIAL OWNER, doth hereby grant and confirm unto the mortgagee, his heirs and assigns, ALL the hereditaments and premises by the within-written indenture expressed to be granted, TO HOLD the last-mentioned premises UNTO and TO THE USE of the mortgagee, his heirs and assigns, discharged from all right or equity of redemption under the within-written indenture. AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agreement, and for the consideration aforesaid, HE the transferor AS MORTGAGEE, and at the request of the mortgagor, doth hereby assign, and he the mortgagor, AS BENEFICIAL OWNER, doth hereby demise and confirm unto the mortgagee ALL the hereditaments and premises by the within-written indenture expressed to be demised, TO HOLD the said premises unto the mortgagee, henceforth for the residue now to come of the within-

Witnesseth.

Consideration.

Assignment of mortgage debt.

Witnesseth, secondly.

Conveyance of freehold parcels.

Habendum.

Witnesseth, thirdly.

Assignment of leasehold parcels.

Habendum.

mentioned term of —— years, except the last day thereof, DISCHARGED from all right or equity of redemption under the within-written indenture. [*Proviso for redemption on payment of the reduced debt, supra*, p. 273. *Declaration of trust of last day and power of attorney*, pp. 262, 263. *Covenant by mortgagor for payment of the reduced debt, and interest, and of interest after default, supra*, pp. 245, 246. *Trusts of surplus sale moneys, supra*, p. 272, *and see* p. 272, n. (*b*). *Proviso as to leasing powers, supra*, pp. 246, 247, *or, if the original mortgage was before* 1*st January*, 1882, *and it is desired to take the powers given by sect.* 18 *of the Act referred to, then an express provision that that section shall apply. Covenant by mortgagor against registration, supra*, p. 246. *Interpretation clause, supra*, p. 240.] IN WITNESS, &c.

PRECEDENT LXXXIV.

TRANSFER BY INDORSEMENT, MORTGAGOR BEING A PARTY. FREEHOLDS AND LEASEHOLDS.

LXXXV.

TRANSFER *of a* MORTGAGE *of* COPYHOLDS *which have* NOT *been* SURRENDERED, *the* MORTGAGOR *having died intestate leaving an* INFANT HEIR (*a*).

PRECEDENT LXXXV.

TRANSFER COPYHOLDS.

THIS INDENTURE, made the —— day of ——, 19—, BETWEEN B., of, &c. [*mortgagee*] (hereinafter called Parties.

(*a*) As to such a transfer, see a note to Davidson's Prec. Conv. vol. ii. pt. ii. 4th ed. p. 793. The mortgage, of which this is supposed to be a transfer, is Precedent LII. If the copyholds had been surrendered, the transfer would be effected by the mortgagee being admitted and surrendering to the transferee. The above Precedent could be adapted to such a case by substituting, for the assignment of the copyholds, a covenant by the mortgagee to surrender the same, subject to the subsisting equity of redemption.

A transfer of a mortgage of copyholds, to which the mortgagor is a party, is usually effected by the mortgagee assigning the mortgage-debt, and the mortgagor covenanting for payment of principal and interest, and surrender of the copyholds, as in an original mortgage.

PRECEDENT LXXXV.

TRANSFER COPYHOLDS.

the transferor), of the first part, D., of, &c. [*administrator of* A., *the mortgagor*], of the second part, and C., of, &c. [*transferee*] (hereinafter called the transferee), of the third part. WHEREAS by an indenture dated the —— day of ——, and expressed to be made between A. of the one part, and the transferor of the other part, in consideration of £—— to the said A. paid by the transferor the said A. covenanted with the transferor, that he the said A., or his heirs, and all other necessary parties, if any, would forthwith surrender into the hands of the lord of the manor of ——, in the county of ——, according to the custom thereof, certain lands and hereditaments holden of the said manor, therein particularly described, to the use of the transferor, his heirs and assigns, according to the custom of the said manor, by and under the accustomed rents, fines, suits, and services, and subject to a condition for making void the said surrender on payment by the said A., his heirs, executors, administrators, or assigns, unto the transferor, his executors, administrators, or assigns, of the sum of £—— [*the principal*], with interest for the same in the meantime at the rate of £—— per cent. per annum on the said —— day of —— then next. And in the same indenture were also contained usual covenants by the said A. for payment of the principal and interest. AND WHEREAS no surrender was made of the said hereditaments, in pursuance of the hereinbefore recited indenture: AND WHEREAS the said A. died on the —— day of ——, intestate, leaving X. Y., now an infant of the age of —— years, his heir, according to the custom of the said manor, and administration to his personal estate was on the —— day of —— granted to the said D., out of the —— Registry (*a*). AND WHEREAS the said sum of £—— is now owing to the transferor on the said security, but all interest thereon has been paid down to the date of these presents. AND WHEREAS the

Recital of mortgage.

Recital that copyholds were not surrendered;

—of death of mortgagor leaving infant heir and grant of administration;

—of state of mortgage debt;

—and agreement for transfer.

(*a*) See p. 153, n. (*a*), *supra*.

PRECEDENT LXXXV.

TRANSFER COPYHOLDS.

transferee has, at the request of the said D., agreed to pay to the transferor the said sum of £——, upon having such transfer as is hereinafter contained of the said mortgage debt of £——, and interest, and the security for the same. NOW THIS INDENTURE WITNESSETH that [*assignment of mortgage debt, ut supra*, pp. 353, 354, *omitting the power of attorney*]. AND THIS INDENTURE ALSO WITNESSETH that in pursuance of the said agreement, and for the consideration aforesaid, HE the transferor, as MORTGAGEE, and at the request of the said D., DOTH HEREBY assign unto the transferee, his heirs and assigns, the said copyhold lands, hereditaments, and premises, covenanted to be surrendered by the hereinbefore recited indenture, with the benefit of the said covenant to surrender, and full power to sue thereon in the name or names of the transferor, or his heirs, and all other powers necessary for enforcing the performance thereof, TO HOLD the said last-mentioned premises unto the transferee, his heirs and assigns, subject to the equity of redemption subsisting therein under the hereinbefore recited indenture, on payment to the transferee, his executors, administrators, or assigns, of the said sum of £——, and the interest to accrue due thereon. IN WITNESS, &c.

Witnesseth assignment of mortgage debt.

Witnesseth, secondly.

Assignment of copyholds.

Habendum

LXXXVI.

PRECEDENT LXXXVI.

STATUTORY TRANSFER.

Deed of STATUTORY TRANSFER, MORTGAGOR NOT *joining* (*a*).

THIS INDENTURE, made by way of statutory transfer of mortgage the —— day of ——, 19—, BETWEEN M., of, &c., of the one part, and T., of, &c., of the other part supplemental to an indenture made by way of statu-

(*a*) See the Conv. Act, 1881 (App. IV., *infra*), ss. 26—29.

PRECEDENT LXXXVI.

STATUTORY TRANSFER.

tory mortgage dated the —— day of ——, 19—, and made between, &c. WITNESSETH that in consideration of the sum of £—— now paid to M. by T. being the aggregate amount of £—— mortgage money and £—— interest due in respect of the said mortgage, of which sum M. hereby acknowledges the receipt, M., as mortgagee hereby conveys and transfers to T. the benefit of the said mortgage. IN WITNESS, &c.

LXXXVII.

PRECEDENT LXXXVII.

STATUTORY TRANSFER.

Deed of STATUTORY TRANSFER, *a* COVENANTOR *joining* (*a*).

THIS INDENTURE, made by way of statutory transfer of mortgage the —— day of ——, 19—, BETWEEN A., of, &c., of the first part, B., of, &c., of the second part, and C., of, &c., of the third part supplemental to an indenture made by way of statutory mortgage dated the —— day of ——, 19—, and made between, &c. WITNESSETH that in consideration of the sum of £——, now paid to A. by C., being the mortgage money due in respect of the said mortgage, no interest being now due and payable thereon, of which sum A. hereby acknowledges the receipt, A., AS MORTGAGEE, with the concurrence of B., who joins herein as covenantor, hereby conveys and transfers to C. the benefit of the said mortgage. IN WITNESS, &c.

(*a*) See the Conv. Act, 1881 (App. IV., *infra*), ss. 26—29.

LXXXVIII.

STATUTORY TRANSFER *and* STATUTORY MORTGAGE *combined* (*a*).

THIS INDENTURE, made by way of statutory transfer of mortgage and statutory mortgage, the — day of ——, 19—, BETWEEN A., of, &c., of the first part, B., of, &c., of the second part, and C., of, &c., of the third part supplemental to an indenture made by way of statutory mortgage dated the —— day of ——, 19—, and made between, &c. WHEREAS the principal sum of £—— only remains due in respect of the said mortgage as the mortgage money, and no interest is now due and payable thereon. AND WHEREAS B. is seised in fee simple of the land comprised in the said mortgage subject to that mortgage. NOW THIS INDENTURE WITNESSETH, that, in consideration of the sum of £—— now paid to A. by C. of which sum A. hereby acknowledges the receipt, and B. hereby acknowledges the payment and receipt as aforesaid (*b*), A., AS MORTGAGEE, hereby conveys and transfers to C. the benefit of the said mortgage. AND THIS INDENTURE ALSO WITNESSETH, that for the same consideration, A., AS MORTGAGEE, and according to his estate and by direction of B., hereby conveys, and B., AS BENEFICIAL OWNER, hereby conveys and confirms to C. All that, &c. (*c*). To HOLD to and to the use of C. in fee simple (*d*)

(*a*) See the Conv. Act, 1881 (App. IV., *infra*), ss. 26—29.

(*b*) In the case of a further advance, after "aforesaid" insert "and also in consideration of the further sum of £—— now paid by C. to B., of which sum B. hereby acknowledges the receipt."

(*c*) For freehold parcels, see pp. 134, 138, &c., *supra*, and for leasehold, pp. 195, 196, n., &c.

(*d*) If leasehold omit the words "and to the use of," and insert instead of "in fee simple" the words "his executors,

PRECEDENT LXXXVIII.

STATUTORY TRANSFER AND MORTGAGE.

for securing payment on the —— day of ——, 19—, of (*a*) the sum of £—— as the mortgage money with interest thereon at the rate of [*four*] per cent. per annum. IN WITNESS, &c.

LXXXIX.

PRECEDENT LXXXIX.

RECONVEYANCE.

RECONVEYANCE *by* INDEPENDENT DEED *of* FREEHOLDS *Mortgaged in Fee.*

Parties.

THIS INDENTURE, made the —— day of ——, 19—, BETWEEN A., of, &c. [*mortgagee*], of the one part, and B., of, &c. [*owner of equity of redemption*], of the other part.

Recital of mortgage; —death of mortgagor intestate; —of state of mortgage debt, —and desire to pay it off.

WHEREAS [*recite mortgage, ut supra*, p. 146, *indicating the parcels as at* p. 352]. AND WHEREAS the said [*mortgagor*] died on the —— day of —— last, intestate, leaving the said B. his heir-at-law (*b*). AND WHEREAS the principal sum of £—— only remains owing to the said A. on the security of the hereinbefore recited indenture, all interest thereon having been paid down to the date of these presents, and the said B. is desirous of paying off the said sum of £——, and of having such reconveyance as is hereinafter contained.

Witnesseth.

Consideration.

Receipt.

NOW THIS INDENTURE WITNESSETH, that, in consideration of the premises and of £—— this day paid by the said B. to the said A. (the receipt whereof the said A. doth hereby acknowledge), HE the said A., AS MORTGAGEE, doth hereby

administrators, and assigns for the residue of the said term of —— except the last day thereof"; and compare Precedents LIV. and LV., *supra*, and the notes to those Precedents.

(*a*) In case of further advance, after "of," insert "the sums of £—— and £—— making together."

(*b*) If the mortgagor died after 1897, a recital of the assent of his personal representatives should be added, or they should join to confirm. See *supra*, p. 177, n. (*b*).

PRECEDENT LXXXIX.

RECONVEYANCE.

grant unto the said B., his heirs and assigns, ALL the said hereditaments and premises by the hereinbefore recited indenture expressed to be granted as aforesaid, AND all other hereditaments, if any, now vested in the said A., subject to redemption by virtue of the same indenture, TO HOLD the said premises UNTO and TO THE USE of the said B., his heirs and assigns, DISCHARGED from all principal monies and interest secured by, and all claims under the hereinbefore recited indenture. IN WITNESS, &c.

Grant.
Parcels.
Habendum.
Discharged from the mortgage debt.

XC.

RECONVEYANCE *by* EXECUTORS *of a* MORTGAGE (*a*).

PRECEDENT XC.

RECONVEYANCE BY EXECUTORS OF MORTGAGEE.

THIS INDENTURE, made, &c., BETWEEN A., of, &c., and B., of, &c. [*executors of the mortgagee*], of the one part, and C., of, &c. [*mortgagor*], of the other part. WHEREAS, &c. [*recital of the mortgage, supra*, p. 374]. AND WHEREAS the said [*mortgagee*] duly executed his will, dated the —— day of ——, and thereby appointed the said A. and B. executors thereof [but did not thereby devise the legal estate (*b*) in the said hereditaments],

Parties.
Recital of mortgage;
—of will, and death, and partial intestacy of mortgagee,

(*a*) This reconveyance takes effect under sect. 4 of the Vendor and Purchaser Act, 1874 (App. II., *infra*), if the mortgagee died not later than 31st December, 1881; or if he died after that date, by the operation of sect. 30 of the Conv. Act, 1881 (App. IV., *infra*).

(*b*) The former statutory power does not appear to be limited to the case where the mortgagee dies intestate as to the legal estate, but where a mortgagee who died before 1st January, 1882, has devised the legal estate, it will be prudent to obtain the concurrence of the devisee in the reconveyance unless and until judicially pronounced unnecessary. When he died on or after that date, the devise will be of no importance, and it should not be either negatived or referred to.

PRECEDENT XC.

RECONVEYANCE BY EXECUTORS OF MORTGAGEE.

and died without having revoked or altered his said will, and the same was proved by the said A. and B. in the —— Registry (*a*) on the —— day of ——. AND WHEREAS the said sum of £—— is now owing to the said A. and B. on the said security, but all interest thereon has been paid down to the date of these presents, and the said C. is desirous of paying off the said sum of £——, and of having such reconveyance as is hereinafter contained. NOW THIS INDENTURE WITNESSETH, that in consideration of all interest on the said sum of £—— having been paid as aforesaid, and of the sum of £—— to the said A. and B. this day paid by the said C. (the receipt whereof the said A. and B. hereby acknowledge), THEY the said A. and B. AS PERSONAL REPRESENTATIVES of the said [*mortgagee*] (*b*) [and in exercise of the power for this purpose given to them as such representatives by the Vendor and Purchaser Act, 1874, and of every other power enabling them on this behalf] (*c*), do and each of them doth hereby grant [convey] and release, unto the said C., his heirs and assigns, ALL the said hereditaments and premises by the hereinbefore recited indenture expressed to be granted as aforesaid and all other hereditaments, if any, which are now subject to redemption by virtue of the same indenture [and which they the said A. and B. are now empowered to convey as aforesaid] (*c*), TO HOLD the said premises UNTO and TO THE USE of the said C., his heirs and assigns, discharged from all principal monies and interest secured by, and all claims under, the said indenture of the —— day of —— [*the mortgage*]. IN WITNESS, &c.

and probate of his will;

—of mortgage debt being due, and of mortgagor's desire to pay it off.

Witnesseth.

Consideration.

Receipt.

Conveyance and release.

Parcels.

Habendum.

(*a*) See p. 153, n. (*a*), *supra*.

(*b*) See Conv. Act, 1881, s. 7 (1) (F) (App. IV., *infra*).

(*c*) The words in square brackets will be omitted if the mortgagee died after 31st December, 1881, and the reconveyance is therefore made by the executors as taking the legal estate under sect. 30 of the Conv. Act, 1881.

XCI.

Release *by* Independent Deed *of* Leaseholds *Mortgaged by Demise.*

Precedent XCI.

Reconveyance of leaseholds mortgaged by demise.

THIS INDENTURE, made the —— day of ——, 19—, BETWEEN A., of, &c. [*mortgagee*], of the one part, and B., of, &c. [*mortgagor*], of the other part. WHEREAS by an indenture dated the —— day of ——, 19—, and made between the said B. of the one part and the said A. of the other part, in consideration of £ - - paid by the said A. to the said B., the said B. demised unto the said A. ALL THAT messuage, &c. [*parcels as in the lease*] for the residue of the term of —— years granted therein by an indenture of lease dated the —— day of ——, 18—, and made between C. D. of the one part and the said B. of the other part, except the last day thereof. AND WHEREAS the said sum of £—— only is owing to the said A. on the security of the hereinbefore recited indenture, all interest for the same having been paid down to the date of these presents. AND WHEREAS the said B. is desirous of paying off the said sum of £—— and of having such surrender as is hereinafter contained. NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £—— now paid to the said A. by the said B. (the receipt whereof the said A. doth hereby acknowledge), HE the said A., AS MORTGAGEE, doth hereby surrender and release unto the said B., ALL AND SINGULAR the premises comprised in and demised by the hereinbefore recited indenture, or which are now by any means vested in the said A. subject to redemption by virtue of the same indenture, to the intent that the term of years created by the hereinbefore recited indenture may merge in the term of years granted by the said indenture of lease and that the same premises may henceforth be held by the said B. discharged from all principal monies and interest secured by and all claims under the hereinbefore recited indenture. IN WITNESS, &c.

Recital of mortgage;

—of state of mortgage debt;

—of mortgagor's desire to pay it off.

Witnesseth.

Consideration.

Receipt.

Surrender and release.

Parcels.

Merger of mortgage term.

XCII.

PRECEDENT XCII.

STATUTORY RECONVEYANCE.

DEED *of* STATUTORY RECONVEYANCE *of Mortgage* (*a*).

THIS INDENTURE, made by way of statutory reconveyance of mortgage the —— day of ——, BETWEEN C., of, &c., of the one part, and B., of, &c., of the other part, supplemental to an indenture made by way of statutory transfer of mortgage, dated the —— day of ——, and made between, &c., WITNESSETH, that in consideration of all principal money and interest due under that indenture having been paid, of which principal and interest C. hereby acknowledges the receipt, C., as mortgagee, hereby conveys to B. all the lands and hereditaments now vested in C. under the said indenture, To HOLD to and to the use of B. in fee simple (*b*), discharged from all principal money and interest secured by and from all claims and demands under the said indenture.

IN WITNESS, &c.

(*a*) See the Conv. Act, 1881 (App. IV., *infra*), ss. 26—29.

(*b*) If leasehold omit the words "and to the use of," and the words "in fee simple."

Leases.

XCIII.

Agreement *for a* Lease (*a*).

Precedent XCIII. Agreement.

Be it remembered, that A., of, &c. [*intended lessor*], hereby agrees to let, and B., of, &c. [*intended lessee*], to take all that, &c. [*parcels*], for —— years from the —— day of ——, at the yearly rent of £——, clear of all existing and future taxes, rates, and outgoings (*b*), and to be payable by equal half-yearly payments on the —— day of ——, and the —— day of ——, in every year, the first of such payments to be made on the —— day of —— next. And that the said B. shall keep the premises, and at the end of the term give them up in the same order and repair as they are now in, and shall keep them insured against loss by fire in a sum not less than £——, and, when required, produce the policy of such insurance, and the receipts for the premiums (*c*). In witness, &c.

(*a*) See, as to the alterations made by the Act 8 & 9 Vict. c. 106, in the law relative to leases and agreements for leases, *supra*, pp. 6 *et seq.*, and also the introduction to Davidson's Prec. Conv. 3rd ed. vol. v. pt. i.; and see as to leases of registered land, pp. 104, 105, *supra*, and as to registration of leases, p. 93, *supra*. The agreements for leases here given must be signed only, not sealed and delivered, for otherwise they might operate as leases. (See, however, *supra*, pp. 7, 8.)

(*b*) As to what outgoings these words will cover, see note (*b*) to Precedent XCVII., *infra*, p. 393.

(*c*) Any further stipulation required may be here inserted. This form should only be adopted in very simple cases, and in which the saving of expense is a great object; for ordinary purposes the next

XCIV.

Agreement *for a* Lease.

Precedent XCIV.

Agreement.

Parties.

Agreement to grant a lease for a certain term at a certain rent.

That the lease shall contain certain covenants.

An agreement made this —— day of ——, between A., of, &c. [*intended lessor*] (hereinafter called the landlord), of the one part, and B., of, &c. [*intended lessee*] (hereinafter called the tenant), of the other part, as follows: The landlord shall let, and the tenant shall take all that, &c. [*parcels*], for the term of —— years from the —— day of ——, at the yearly rent clear of all existing and future taxes, rates, and outgoings, of £——, to be payable by four equal payments, on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of —— in every year; the first of such payments to be made on the —— day of —— next. The landlord will, on the request of the tenant, execute a proper lease of the premises to the tenant, for the term and at the rent aforesaid, to be payable as aforesaid. The said lease shall contain covenants on the part of the tenant, for payment of the said net yearly rent of £——, on the days and in manner aforesaid; And for payment of all existing and future rates, taxes, and outgoings (*a*); And to keep the said premises in good condition and complete repair; And in such condition and repair to deliver up the same, with all new fixtures and other additions, to the landlord, at the expiration or other sooner determination of the said term; And to keep the said messuage and buildings insured against damage by fire in a sum not less than ——; And at all times, when required, to produce the policy or policies of such insurance, and the receipts for the pre-

Precedent should be used. A power of re-entry on breach of covenants cannot it seems be claimed, unless expressly provided; see *Hodgkinson* v. *Crowe*, L. R. 10 Ch. 622; *Anderton and Milner's Contract*, 45 Ch. D. 476; *Re Lander and Bagley's Contract*, [1892] 3 Ch. 41.

(*a*) See *infra*, p. 393, n. (*b*).

miums in respect of the same, to the landlord; AND not to assign or underlet the said premises without licence in writing from the landlord; AND not to carry on, or permit to be carried on, upon the said premises, any noisome or offensive trade, business, or occupation. THE said lease shall also contain a proviso for re-entry by the landlord, on non-payment of the said yearly rent of £——, or any part thereof, for twenty-one days next after any of the said days on which the same, or any part thereof, shall become due, and whether the same shall have been legally demanded or not, or on the breach of any of the covenants by the tenant in the said lease to be contained. THE said lease shall contain a covenant, on the part of the landlord, that the tenant may, on due payment of the said yearly rent to be reserved as aforesaid, and on the performance and observance of the covenants by the tenant in the said lease to be contained, quietly enjoy the premises to be demised, without eviction or disturbance by the landlord, or any person claiming through or in trust for him (*a*). THE tenant shall duly execute and deliver to the landlord a counterpart of the said lease. THE said lease and counterpart shall be prepared by the solicitor of the landlord, and the expenses of preparing and executing this agreement and the said lease and counterpart, and all other incidental expenses, shall be paid by the landlord and tenant in equal shares (*b*). UNTIL the execution of the said lease, the said premises shall be held by the tenant, at the rent aforesaid, and subject to the covenants and conditions to be contained in the said lease as afore-

That the lease shall contain a proviso for re-entry;

—and a covenant for quiet enjoyment.

That lessee shall execute a counterpart.

That lease and counterpart shall be prepared by the lessor's solicitor, and the expense equally divided.

That lessee shall meanwhile hold on the terms of the lease.

(*a*) See p. 395, *infra*, n. (*b*).

(*b*) In the absence of special stipulation, a lease is always prepared by the solicitor of the lessor, and at the expense of the lessee. Where, in an agreement for a lease, it was provided that the lease should be drawn, prepared, and executed at the sole expense of the lessor, it was held that, in an action by the lessee on the agreement, it was not necessary to aver that a lease was tendered to the lessor for execution. (*Price* v. *Williams*, 1 M. & W. 6.)

PRECEDENT XCIV.

AGREEMENT.

Interpretation clause.

said, so far as the rules of law will permit (*a*). IN these presents, unless such an interpretation is inconsistent with the context, the expression the landlord hereinbefore used shall include his heirs and assigns (*b*), and the expression the tenant hereinbefore used shall include his executors, administrators, and assigns. IN WITNESS, &c (*c*).

XCV.

PRECEDENT XCV.

AGREEMENT FOR TENANCY FROM YEAR TO YEAR.

AGREEMENT *for a* TENANCY *from* YEAR *to* YEAR.

Parties.

Agreement to let.

Parcels.

AN AGREEMENT, made the —— day of ——, 19—, BETWEEN A., of, &c. (hereinafter called the landlord), of the one part, and B., of, &c. (hereinafter called the tenant), of the other part. THE LANDLORD will, on the request and at the cost of the tenant, grant to the tenant, and the tenant will accept, a lease of THE HOUSE and SHOP numbered —— in —— Street, in the parish of ——, with

(*a*) *Semble*, this clause is no longer needed; see pp. 7, 8, *supra*. If the term be not for more than three years, the final clause of the next Precedent should be here added.

(*b*) If the landlord himself holds for a term, substitute, "executors, administrators, and assigns." As to interpretation clauses generally, see *supra*, p. 238, n.

(*c*) It will be observed, that all the covenants and conditions to be contained in the lease are specified in the agreement, because an agreement that the lease shall contain all usual covenants and conditions generally leads to disputes as to what are usual covenants and conditions. The method in the text is not free from risk; for, as the nature of each covenant and condition is only mentioned generally, disputes may arise as to its extent and form. The only safe way is either to insert in the agreement all the covenants and conditions literally as they are to stand in the lease, or (which is substantially the same thing and now perhaps usual) to schedule the form of lease; but this makes the agreement so much longer that it is sometimes objected to. The method in the text is the next best.

PRECEDENT XCV.

AGREEMENT FOR TENANCY FROM YEAR TO YEAR.

the appurtenances, for the term of one year from the —— day of ——, and so on from year to year, until the demise shall be determined at the end of the first or any subsequent year by one party giving to the other not less than three calendar months' previous notice in writing (*a*), at the YEARLY RENT of £——, payable quarterly, without deduction, on the usual quarter days, the first quarterly payment to be made on the —— day of —— next. THE LEASE shall contain the following covenants by the tenant, namely, TO PAY the rent on the days and in manner aforesaid: AND TO PAY all existing and future taxes, rates, assessments, and outgoings of every description, for the time being payable in respect of the said premises (*b*), AND TO KEEP the premises in good condition and complete repair during the term, AND in such condition and repair to deliver up the same at the expiration or sooner determination of the term. NOT to carry on any noisome or offensive trade upon the premises. NOT to assign, or underlet, or part with the possession of the premises, without the consent in writing of the landlord. AND A PROVISO for re-entry, if and whenever (*c*) any part of the rent shall be at any time in arrear for twenty-one days, or if and whenever there shall be a breach of any of the tenant's covenants. AND the usual qualified covenant by the landlord for quiet enjoyment by the tenant. THESE PRESENTS are not intended to give the tenant any legal

Rent.

Lease to contain covenants by lessee to pay the rent and taxes;

to repair;

and deliver up the premises.

Not to carry on offensive trades.

Not to assign.

Proviso for re-entry;

—and covenant for quiet enjoyment.

Agreement not to operate as a demise.

(*a*) A tenancy from year to year of an agricultural or pastoral holding should now be made determinable either by a year's notice, as provided by the Agricultural Holdings Act, 1908, s. 22, or else by a half-year's notice, in which case a clause excluding the application of that section should be added, and the agreement or counterpart should be signed by both parties. See *Wilkinson* v. *Calvert*, 3 C. P. D. 360, a decision on the corresponding section of the Agricultural Holdings Act, 1875, and *Barlow* v. *Teal*, 15 Q. B. D. 403, which seems to have been approved in *Friend* v. *Shaw*, 20 Q. B. D. 374.

(*b*) See *infra*, p. 393, n. (*b*).

(*c*) See *infra*, p. 400, n. (*a*).

PRECEDENT XCV.

AGREEMENT FOR TENANCY FROM YEAR TO YEAR.

interest in the premises until the execution of the said lease. [*Interpretation clause, supra*, p. 382.] IN WITNESS, &c. (*a*).

XCVI.

PRECEDENT XCVI.

AGREEMENT FOR BUILDING LEASES.

AGREEMENT *for* LEASES *of parts of an* ESTATE *for the purpose of laying out* STREETS *and* BUILDING HOUSES.

Parties.

AN AGREEMENT entered into the —— day of —— 19—, BETWEEN A., of, &c., and B., of, &c. (hereinafter called the landlords), of the one part, and C., of, &c., and D., of, &c., builders (hereinafter called the tenants), of the other part.

Tenants to lay out streets.

1. WITHIN —— years from the date hereof the tenants will, at their own expense, lay out and form upon the parcels of land described in the first schedule hereto and delineated in the plan hereto annexed, and thereon distinguished as to the different parts by the colours brown and pink, the several streets shown as intended streets on the said plan, and thereon coloured brown, with proper sewers in or under the same, and they will at all times during the term of ninety years from the —— day of ——, 19—, or until the same streets and sewers respectively shall be demised in pursuance of the agreement in that behalf hereinafter contained, or shall be adopted by the local authority, at their own expense, keep the same in good order and repair.

Tenants to build houses on certain parts.

2. WITHIN —— years from the date hereof, the tenants will, at the like expense, build houses on the whole of the land coloured pink on the said plan, with proper drains therefrom into the said intended sewers, or into some other

(*a*) This agreement, being for a term less than three years, is not within the provisions of the Act 8 & 9 Vict. c. 106, s. 3. See *supra*, pp. 6, 7, and Davidson's Prec. Conv. vol. v. 3rd ed. pp. 5—18.

convenient sewers; such houses to be not less than —— in number, and to be either substantial dwelling-houses containing *ten* rooms with separate yards, gardens, forecourts, offices and outbuildings thereto respectively, or dwelling-houses or shops of such other description as may be approved of by the landlords, and to be finished fit for occupation within the time aforesaid.

Tenants to form streets and build houses in conformity with requirements of local authority, and with provisions in the second schedule.

3. THE tenants will lay out and form all such streets and sewers and drains, and build all such houses as aforesaid, in conformity with the requirements of the local authority or authorities, and with the provisions and specifications in that behalf contained in the second schedule hereto, and under the superintendence and to the satisfaction of the surveyor for the time being of the landlords.

Tenants not to carry on offensive trades or dig clay.

4. THE tenants shall not carry on or commit or permit to be carried on or committed upon any part of the said parcels of land or in any building or erection thereon, any manufacture of an obnoxious character, or any noisy noisome or offensive trade, business or occupation, or any nuisance, nor shall they get, dig, or remove out of or from the said parcels of land any clay, sand, loam, gravel, brick or other earth, except such as shall be excavated in the formation of the said streets, sewers and drains, and of the foundations of the said houses, or shall be required for the construction of the sewers, drains, houses and erections aforesaid.

Tenants to pay certain fixed rents until leases are granted.

5. THE tenants will in the meantime and until a lease or leases shall have been granted, in pursuance of the agreement in that behalf hereinafter contained, of the whole of the said parcels of land, or of so much thereof as shall not be adopted by the local authority for streets ways or other public places, pay unto the landlords the several yearly rents following, that is to say, for the first *three* years from the —— day of ——, 19—, the sum of £——; for the *fourth* year from the same day the sum of £——, &c., &c.; AND for the *fifth* and every subsequent

PRECEDENT XCVI.

AGREEMENT FOR BUILDING LEASES.

year from the same day the sum of £——; each of such yearly rents to be paid by four equal quarterly payments on the four usual quarter days in every year, and the first of such quarterly payments of the said rent of £—— [*the minimum rent*], to be made on the —— of ——, 18—, but so nevertheless that from the yearly rent for the time being payable under this present agreement, there shall always be deducted the yearly rent or rents (if any) which shall for the time being have been reserved and become payable under any lease or leases which shall then have been granted in pursuance of the agreement in that behalf hereinafter contained, and so that if the rent or the total sum of the rents which shall at any time have been reserved and become payable upon any such lease or leases shall be equal to or exceed the rent for the time being payable by virtue of this present clause or provision, such last-mentioned rent shall wholly cease.

Tenants not to remove buildings on the premises until houses have been erected sufficient to secure the rents.

6. THE dwelling-houses, buildings and offices now on the said parcels of land, shall not be removed until the surveyor for the time being of the landlords shall have certified that sufficient buildings have been erected to secure the said yearly rent of £—— [*the maximum*].

Tenants to have power of entry to execute works.

7. THE tenants may enter into possession of the said parcels of land described in the said first schedule hereto and delineated on the said plan for the purpose of carrying into execution the several agreements by them hereinbefore contained, and with all rights and powers necessary for such purpose, and particularly with power (after such certificate as aforesaid in that behalf shall have been made) to pull down the said messuages, buildings, and offices now on the said parcels of land, and to make use of or sell and dispose of the materials thereof for the purpose of the new erections or buildings.

Tenants not to assign (*a*).

8. THE tenants shall not assign, underlet, or in any

(*a*) A tenancy at will (see clause 17, *infra*) is not assignable, but it seems desirable nevertheless expressly to prohibit assignment, unless for any reason it is intended to be permitted.

manner dispose wholly or partially of the benefit of this agreement without the previous consent in writing of the landlords.

Landlords to grant leases when houses are built.

9. THE landlords will from time to time, or at any time after the said streets and sewers and drains shall have been formed and made as aforesaid, at the expense of the tenants, when and as often as any *ten* houses (*a*) shall have been erected, built and covered in, to the satisfaction of the said surveyor, and according to the agreements hereinbefore contained, grant one or more lease or leases of the same and of the sites thereof, and of the intended yards, gardens, forecourts, offices and outbuildings thereto, and such streets or portions of streets as are hereinafter mentioned, but so that not more than *ten* houses shall be comprised in any such lease, and that every such lease shall be for a term which shall expire (unless sooner determined by surrender, re-entry, forfeiture or otherwise) on the —— day of ——, 19—, and shall be as nearly as circumstances will admit, and with such alterations and additions (if any) as circumstances shall require, in the form, and contain the exceptions, reservations, covenants, agreements, and stipulations set forth in the third schedule hereto.

Each lease to comprise the whole or part of adjacent street.

10. EXCEPT as to houses facing —— Road (*b*), every such lease shall comprise at least one equal moiety of so much of the street in which the premises therein comprised are situate as shall immediately adjoin such premises, and if any such lease shall comprise houses on both sides of any such street, then the entirety of the street lying between such houses, but in all cases with powers, exceptions and reservations for the use by other

(*a*) It is usual to grant a separate lease of each house; but the Precedent can be adapted to that arrangement by alterations of the simplest character. As to the position when the tenants have entitled themselves to leases of some houses but are in default as to others, see *Lowther* v. *Heaver*, 41 Ch. D. 248.

(*b*) An existing public road.

PRECEDENT XCVI. — AGREEMENT FOR BUILDING LEASES.

persons, as in the said third schedule hereto is expressed, of the said several streets and of the sewers in or under the same, and in the case of the entirety of any street being included in any such lease as aforesaid, so much of the said form of lease comprised in the said third schedule as may be necessary shall be altered and made applicable accordingly.

Proportion of rent to be reserved on each lease.

11. THE rent to be reserved by every such lease as aforesaid shall bear the same proportion to the said rent of £—— [*the maximum*] as the area of the land (including the sites of houses and buildings and streets) demised by such lease, shall bear to —— square yards, the total area of the whole of the said parcels of land described in the said first schedule hereto and delineated on the said plan, so that when all the said intended leases of the said houses shall have been granted the total rents thereby reserved shall amount to the said sum of £—— [*the maximum*]; PROVIDED nevertheless that the tenants may require the said rent of £—— to be unequally distributed among the several leases aforesaid, but so that the rent reserved on any such lease shall not exceed one equal *sixth* part of the clear yearly rack-rent of the houses and hereditaments comprised in such lease when fit for habitation.

Tenants to accept leases when granted, and execute counterparts and pay all expenses.

12. THE tenants will, when and so often as there shall be *ten* houses erected, built, and covered in, of which no lease shall have been granted, apply for and accept one or more such lease or leases as aforesaid of such houses with the appurtenances as aforesaid without requiring the landlords to show their title to grant the same, and duly execute a counterpart or counterparts of such lease or leases [and a memorial or memorials thereof for registration (*a*)]. AND all such leases and counterparts [and

(*a*) Applicable only to a register county. It is believed that building *agreements* are not usually registered. And they do not come within the compulsory provisions of the Land Transfer Acts, 1875 and 1897. But see pp. 89, and 104—106, *supra*, as to cautions.

memorials] as aforesaid shall be prepared by the solicitors of the landlords, and the tenants will pay the costs of so preparing the same, and of obtaining the execution thereof by all parties [and of registering the same], and all other expenses of and relating to every such lease, and to the premises (including the charges and expenses of preparing and obtaining the execution of these presents in duplicate [and registering the same]), and likewise all fees and other monies which may become payable to any district or public surveyor in respect of the premises, and a fee of £—— to the surveyor for the time being of the landlords, on his giving a certificate previous to a lease being granted of any part or parts of the premises for each of the messuages to be comprised therein, as his remuneration for previously and subsequently superintending the erection and completion thereof, and seeing that the same is erected conformably to the agreements hereinbefore in that behalf contained, and in addition thereto his proper and usual charges for making and preparing a ground plan of the property demised, and drawing the same on every such lease and counterpart [and memorial], and also will in the meantime and until such lease or leases shall have been granted perform and observe the covenants by the tenants and conditions to be contained in such lease or leases respectively in the same manner in all respects as if such lease or leases respectively had been actually granted (*a*).

Power of re-entry if rent be in arrear, or any breach of agreement.

13. IF and whenever any part of the yearly rent which under or by virtue of these presents shall for the time being be payable by the tenants until leases shall have been granted in pursuance of the provisions in that behalf hereinbefore contained of the whole of the premises hereby agreed to be demised shall be in arrear for ten days, whether legally demanded or not, or if and whenever there shall be a breach of any of the tenants' agreements

(*a*) See *Driscoll* v. *Borough of Battersea*, [1903] 1 K. B. 881.

PRECEDENT XCVI.

AGREEMENT FOR BUILDING LEASES.

hereinbefore contained, the landlords may re-enter on the whole of the premises then remaining to be demised, and repossess the same as if these presents had not been entered into, and these presents shall thereupon absolutely determine.

Power for landlords to remove tenants from further interference with the work if they make default (*a*).

14. IF the landlords in consequence of the tenants making default in the execution of the works hereinbefore agreed to be done by them or any of such works or in proceeding therein in a workmanlike manner and with proper diligence (whether under such circumstances as shall authorize the landlords to determine this agreement or not) shall at any time think fit to remove the tenants from the further execution of or interference with such works or any of them, the landlords may do so upon the terms following (that is to say), a notice in writing from the landlords to the tenants shall be served upon the latter or left upon the premises specifically pointing out the default on the part of the tenants which shall have taken place, and if the surveyor for the time being of the landlords shall certify in writing that such default has not been remedied within the space of —— after such notice as aforesaid, then and in such case the landlords may remove the tenants from the further execution of or interference with the works, and may employ any other builder or builders or person or persons to finish the same, and pay him or them for so doing, and the monies so paid shall be a debt due from the tenants carrying interest at the rate of £6 p.c. per annum, and constitute a first charge on the premises remaining to be demised, which (if not re-entered upon by the landlords) may be sold to pay such charge without regard to any monies expended thereon by the tenants, and the landlords may also take possession of the materials, stocks, implements and plant which may be in or upon or connected with the premises or the works.

(*a*) As to this and the next following clause, see *Hart* v. *Porthgain Harbour Co., Ltd.*, [1903] 1 Ch. 690.

15. THE whole of the materials, stocks, implements and plant brought upon any part of the premises by the tenants shall be considered the property of the landlords until the premises whereon the same may be shall have been demised to the tenants, and no portion thereof shall be removed without the consent or order in writing of the surveyor for the time being of the landlords.

Plant to become the property of the landlords.

16. IF any difference shall arise between the landlords and the tenants touching these presents or anything herein contained, or the construction or operation hereof, or the rights, duties, or liabilities of any party in connection with the premises, the matter in difference shall be referred to two arbitrators, one to be appointed by each party (*a*) pursuant and so as in all respects to conform to the provisions in that behalf contained in the Arbitration Act, 1889, or any then subsisting statutory modification thereof.

Arbitration clause.

17. THESE PRESENTS are intended until the leases of the said parcels of land respectively shall be executed, to create a strict tenancy at will on the part of the tenants in respect of the same parcels respectively upon the terms aforesaid, and also to entitle the landlords to the like power and remedy, by distress or otherwise, for the recovery of the rent or respective rents to become due under these presents, as if such lease or leases had been actually granted, and such rent or rents been reserved thereby and had become in arrear (*b*).

The agreement to create a tenancy at will.

18. IN these presents, unless such an interpretation is inconsistent with the context, the expression the landlords

Interpretation clause.

(*a*) Or say, "to a single arbitrator," if that mode of reference be preferred. Sect. 5 of the Arbitration Act, 1889 (52 & 53 Vict. c. 49) (it should be observed), seems to contemplate that in that case the submission will expressly so provide, though according to the schedule this would not be necessary.

(*b*) It seems necessary to retain this clause, notwithstanding *Driscoll* v. *Borough of Battersea*, cited p. 389, *supra*.

PRECEDENT XCVI.

AGREEMENT FOR BUILDING LEASES.

hereinbefore used shall include their heirs and assigns (*a*), and the expression the tenants hereinbefore used shall include their executors, administrators, and assigns. As WITNESS, &c.

First schedule.

THE FIRST SCHEDULE above referred to.
(*To contain the description of the premises.*)

Second schedule.

THE SECOND SCHEDULE above referred to.
(*To contain the specifications, &c.*)

Third schedule.

THE THIRD SCHEDULE above referred to.
(*To contain the form of lease. See Precedent CIX., infra.*)

XCVII.

PRECEDENT XCVII.

OF COTTAGE FROM YEAR TO YEAR.

LEASE *of a* COTTAGE *from* YEAR *to* YEAR (*b*).

Parties.

AN AGREEMENT (*c*), made the —— day of ——, 19—, BETWEEN A. B., of, &c. [*landlord*] (hereinafter called the lessor), of the one part, and C. D., of, &c. [*tenant*] (hereinafter called the lessee), of the other part.

Agreement to let and take.

THE LESSOR hereby agrees to let and the lessee to take

Parcels.

ALL THAT cottage situate in the parish of ——, in the county of ——, now in the occupation of ——, with the

(*a*) If the landlords are leaseholders, substitute "executors, administrators or assigns." As to interpretation clauses generally, see *supra*, p. 238, note.

(*b*) As to stamp duties on leases, see the Stamp Act, 1891 (54 & 55 Vict. c. 39), First Schedule, sub tit. "Lease or Tack," and sect. 75 of the Finance (1909—10) Act, 1910 (10 Edw. 7). It may be mentioned here that on the grant of a lease for less than fourteen years increment value duty under the latter Act is not payable.

(*c*) This Precedent, though in form an agreement, is in effect a demise. The term being less than three years, it is not required to be by deed. See *supra*, pp. 6, 7.

cow-house, piggeries, garden (*a*), and appurtenances therewith usually occupied, for the term of ONE YEAR from the —— day of —— last, and so on from year to year until the demise shall be determined at the end of the first or any subsequent year, by either party giving to the other three calendar months' previous notice in writing, AT THE YEARLY rent of ——, clear of all deductions, to be paid by equal quarterly payments on the four usual quarter days, the first such payment to be made on the —— day of ——, 19—. THE LESSEE further agrees with the lessor TO PAY the said rent on the days and in manner aforesaid. To PAY all rates, taxes, and outgoings (*b*), now payable, or hereafter to become pay-

PRECEDENT XCVII.

OF COTTAGE FROM YEAR TO YEAR.

Term.

Rent.

Agreement by lessee to pay rent.

To pay taxes.

(*a*) Compensation is secured to cottagers for crops left at the end of their tenancies by 50 & 51 Vict. c. 26, of which the short title is "The Allotments and Cottage Gardens Compensation for Crops Act, 1887," and (as against mortgagees) by the Tenants' Compensation Act, 1890 (53 & 54 Vict. c. 57).

(*b*) That "taxes and assessments" alone (though including land tax) will not include tithe rent-charge, but that "outgoings" will include both, see *Parish* v. *Sleeman*, 1 De G. F. & J. 326; *Jeffrey* v. *Neale*, L. R. 6 C. P. 240. However, by the Tithe Act, 1891 (54 Vict. c. 8), tithe rent-charge is imposed upon the owner, and a contract for payment of such rent-charge by the occupier is avoided; see *Lord Ludlow* v. *Pike*, [1904] 1 K. B. 531. Any outgoings which are intended to be paid by the lessor, and which are not of necessity payable by him, should be expressly excepted, or the covenant may be expressly confined to such as are payable by the tenant: but the former plan is preferable. The words in the text will include rates and charges made by statute payable by the owner of the premises, *e.g.*, the expenses of drainage works or paving under the Metropolis Management Act, 1855, or the Public Health Acts. See *Wilkinson* v. *Collyer*, 13 Q. B. D. 1; *Aldridge* v. *Ferne*, 17 Q. B. D. 212; *Brett* v. *Rogers*, [1897] 1 Q. B. 525; *Stockdale* v. *Ascherbery*, [1903] 1 K. B. 873; [1904] 1 K. B. 447 (tenancy for three years with agreement by tenant to pay "outgoings"); *Harris* v. *Hickman*, [1904] 1 K. B. 13 (yearly tenancy with the like agreement). The tendency of the Courts, illustrated by the cases mentioned and the more recent cases, *e.g.*, *Goldstein* v. *Hollingsworth*, [1904] 2 K. B. 578, and *Morris* v. *Beal*, *ib.* 585, is to put a broad

PRECEDENT XCVII.

OF COTTAGE FROM YEAR TO YEAR.

able in respect of the said premises. To KEEP the said premises (including the fixtures) in good condition and [tenantable] repair (reasonable wear and tear excepted) (*a*). To PERMIT the lessor and his agents to enter twice or oftener in every year to view the condition of the said premises. AND AT the expiration or sooner determination of the demise, to quietly deliver up the said premises in such repair and condition as aforesaid. PROVIDED ALWAYS, that on breach of any of the lessee's agreements herein contained the lessor may re-enter on

To keep in repair.

To permit lessor to enter and view.

To deliver up demised premises.

Proviso for re-entry.

construction upon a lessee's covenant for payment of "outgoings," but some doubt has apparently been entertained whether the decisions have not gone too far in relation to expenses incurred in compliance with the regulations of public authorities: see *Stuckey* v. *Hooke*, [1906] 2 K. B. 20. Upon the construction of similar covenants by lessors, *Badcock* v. *Hunt*, 22 Q. B. D. 145 (where the covenant was to pay rates generally); *Re Floyd*, [1897] 1 Ch. 633 (where it was for payment of water rate); *Bourne & Tant* v. *Salmon & Gluckstein, Ltd.*, [1907] 1 Ch. 616 (where a covenant to pay rates was held to include the water rate); *Mansfield* v. *Relf*, [1908] 1 K. B. 71 (where it was for payment of land tax); and *Salaman* v. *Holford*, [1909] 2 Ch. 602 (where the covenant was for payment of "rates and taxes now payable or hereafter to become payable" and the assessment had been increased by subletting at a profit), may be referred to. When it is intended that all charges and outgoings of the nature referred to should as far as possible be paid by the tenant, so as to ensure the landlord a net rent in any event, the clause may be in the following fuller form:—

"To PAY all rates, taxes, assessments, impositions and outgoings now, or hereafter to be, charged or imposed upon the said premises, or now, or hereafter to be or become charged or imposed upon, or payable by, either landlord or tenant in respect of the same."

On this subject generally, see Davidson's Prec. Conv. vol. v. pt. i. 3rd ed. p. 22, n. (*c*).

(*a*) As to what is "tenantable repair," see *Crawford* v. *Newton*, 36 W. R. 54; *Proudfoot* v. *Hart*, 25 Q. B. D. 42; *Torrens* v. *Walker*, [1906] 2 Ch. 166.

any part of the said premises in the name of the whole, and thereupon this demise shall determine (*a*). THE LESSOR agrees with the lessee that he, paying the said yearly rent, and performing and observing the agreements by him herein contained (*b*), may peaceably hold the said premises during the demise without any interruption by the lessor or any person claiming under him. [*Interpretation clause, supra*, p. 382, *putting* "lessor" *for* "landlord" *and* "lessee" *for* "tenant."] IN WITNESS, &c.

Agreement by lessor for quiet enjoyment.

(*a*) The lessor's rights under this proviso are restricted by sect. 14 of the Conv. Act, 1881 (Appendix IV., *infra*); and see Conv. Act, 1892 (Appendix VI., *infra*), s. 2, but the section does not seem to necessitate any alteration in the form of the proviso.

(*b*) These words do not make payment of the rent and performance of the lessee's agreements or covenants a condition precedent to the performance by the lessor of the covenant for quiet enjoyment, but refer (it is submitted) to the lessor's powers to enter to view, and on breach of the lessee's covenants, and ought therefore to be retained, notwithstanding *Edge* v. *Boileau*, 16 Q. B. D. 117, which, moreover, decided nothing new. As to covenants by lessors for quiet enjoyment, which, it should be observed, apply to an interference not merely with the title, but also with the possession of the thing demised, see *Robinson* v. *Kilvert*, 41 Ch. D. 88; *Schwartz* v. *Locket*, 61 L. T. 719; *Harrison, Ainslie & Co.* v. *Lord Muncaster*, [1891] 2 Q. B. 680; *M. S. & L. Ry. Co.* v. *Anderson*, [1898] 2 Ch. 394; *Tebb* v. *Cave*, [1900] 1 Ch. 642 (building by the lessor so as to cause the lessee's chimneys to smoke); and *Davis* v. *Town Properties Investment Corporation, Ltd.*, [1902] 2 Ch. 635; [1903] 1 Ch. 797, in which doubt was thrown by the Court of Appeal upon *Tebb* v. *Cave*, and it was suggested that the act complained of must be a direct interference with the enjoyment of the thing demised in order to constitute a breach of the covenant. Interruption by the act of the superior landlord is no breach of a covenant in the above form: *Kelly* v. *Rogers*, [1892] 1 Q. B. 910.

XCVIII.

PRECEDENT XCVIII.

OF A HOUSE IN A TOWN.

LEASE *of a* HOUSE *in a* TOWN *with* RESERVATION *of* WATERCOURSE. OPTION OF PURCHASE.

Parties. THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. [*lessor*] (hereinafter called the lessor), of the one part, and C. D., of, &c. [*lessee*] (hereinafter called the lessee),

Witnesseth. of the other part, WITNESSETH, that the lessor doth hereby

Demise. demise unto the lessee ALL THAT dwelling-house, num-

Parcels. bered —— in —— street, in the parish of ——, in the town of ——, with the yards, outbuildings, and ground held therewith, as the site thereof is delineated on the plan in the margin of these presents, and is thereon

Exception. coloured ——, EXCEPT, nevertheless, out of this demise, and reserved unto the lessor, the full right of passage, and running of water and soil from all neighbouring lands and houses of the lessor, through all drains, channels, and sewers in or under the said premises [*insert here any*

Habendum. *other like reservations*]. To HOLD the premises, except as aforesaid, UNTO the lessee, for the term of —— years

Reddendum. from the date of these presents; YIELDING therefor, during the said term, the yearly rent of £ — clear of all deductions, by equal half-yearly payments on the —— day of —— and the —— day of —— in every year, the first of such payments to be made on the —— day of —— next (*a*) [and the last to be made in advance

(*a*) In some former editions the following additional reservation, the object of which was to prevent the loss by re-entry of the whole current half-year's or quarter's rent, was inserted in most of the precedents of leases:—

"AND ALSO yielding in the event of, and immediately upon the said term being determined by re-entry under the proviso hereinafter contained, a proportionate part of the said rent for the fraction of the current half-year [*or* quarter], up to the day of such re-entry."

on the —— day of ——, immediately preceding the expiration of the said term (*a*)]. AND the lessee doth hereby for himself and his assigns covenant with the lessor (*b*), THAT he the lessee during the said term will pay the yearly rent hereinbefore reserved, on the days and in manner aforesaid; AND will pay all rates, taxes, and outgoings now payable or hereafter to become pay-

Covenant by the lessee, to pay the rent; —and rates, &c.;

This reservation, however, was of little practical value, because the power of re-entry would seldom be exercised in the case of a solvent tenant, and therefore any such reservation was omitted in several of the shorter Precedents. Under the Apportionment Act, 1870 (33 & 34 Vict. c. 35), all rents are now (sect. 1) to be considered as accruing from day to day, and apportionable accordingly, and (sects. 3 and 4) the apportioned part of a rent determined by re-entry is made payable on the day when the next entire portion of the rent would have been payable if not so determined, and recoverable in the same manner as such entire portion. See *Swansea Bank* v. *Thomas*, 4 Ex. D. 94; *Hopkinson* v. *Lovering*, 11 Q. B. D. 92; and compare *Re South Kensington Co-operative Stores*, 17 Ch. D. 161; *Bishop of Rochester* v. *Le Fanu*, [1906] 2 Ch. 513. Hence the only additional advantage now gained by the above reservation would be to make the apportioned part of the rent recoverable immediately upon re-entry, and such reservation may be properly dispensed with, where, as in these Precedents, conciseness is desired.

(*a*) This is intended to facilitate collection of the last payment, which otherwise would not be due until the end of the term, and will enable the lessor to distrain accordingly, which he could not otherwise do. See *London and Westminster Loan and Discount Company* v. *London and North Western Railway Company*, [1893] 2 Q. B. 49. As to its validity, see *Doe* v. *Wythe*, 10 Cl. & Fin. 419. It is not usually inserted in leases under powers.

(*b*) See sects. 58 and 59 of the Conv. Act, 1881 (Appendix IV., *infra*), rendering unnecessary any express mention of the heirs and assigns of the lessor, and sect. 59 of the same Act rendering the covenant binding on the heirs and real estate as well as on the executors or administrators of the covenantor, but, as the last-mentioned section does not purport to render the covenant binding on the assigns of the covenantor, it has been thought better, having regard to *Spencer's case*, 5 Rep. 16, 1 Sm. L. C., to retain a reference to them. See, however, *Minshull* v. *Oakes*, 2 H. & N. 793.

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OF A HOUSE IN A TOWN.

—and keep the premises insured;

—and in repair;

able in respect of the said premises (*a*); AND will keep the said premises insured against loss or damage by fire in such office (*b*) as the lessor shall approve, and will, when required, produce the policy of such insurance, and the current year's receipt for the premium thereon, to the lessor (*c*) AND will expend all monies received in respect of such insurance in reinstating or repairing the premises destroyed or damaged by fire; AND will keep the said premises in good condition and complete repair, and without any alteration, except such as

(*a*) See p. 393, n. (*b*).

(*b*) In many leases the insurance is required to be kept up in the joint names of the lessor and lessee, or their respective representatives, but there is often much practical difficulty in complying with this stipulation in consequence of changes in the ownership of the reversion, and therefore it is generally better omitted. Under sect. 83 of 14 Geo. III. c. 78 (which section is excepted from the repeal of the above Act by sect. 34 of 28 & 29 Vict. c. 90), a lessor of property within the metropolitan district, and, it is considered, also of property without that district, can compel the application of monies received under a fire insurance in rebuilding or repairing the building destroyed or damaged by fire. See, as to the operation of the above Act, *Simpson* v. *Scottish Union Insurance Co.*, 1 H. & M. 618; *Ex parte Goreley*, 4 De Gex, J. & S. 477; *Westminster Fire Office* v. *Glasgow, &c. Society*, 13 App. Cas. 699; *Re Quicke's Trusts*, [1908] 1 Ch. 887.

(*c*) By the Act 22 & 23 Vict. c. 35, ss. 4, 6 (repealed by the Conv. Act, 1881 (Appendix IV., *infra*), s. 14, sub-s. (7)), Courts of Equity were enabled to relieve against forfeitures incurred by breach of covenant to insure, except in cases where a previous forfeiture by the same person had been already waived—but only once in favour of the same person. That the Act applies to cases of forfeiture incurred after the passing of the Act under a covenant contained in a lease made before the Act, see *Page* v. *Bennett*, 2 Giff. 117. The power was extended to Courts of Law by the Act 23 & 24 Vict. c. 126, s. 2 (similarly repealed). But cases of breach of covenant to insure will now come within sect. 14 of the Conv. Act, 1881, and relief, when not rendered needless by sub-sect. (1), can be obtained under sub-sect. (2). And see the Conv. Act, 1892 (Appendix VI., *infra*), s. 2.

the lessor shall approve of (*a*) : AND, at the expiration or sooner determination of the said term, so yield up the same to the lessor; AND will permit the lessor and his agents, surveyors, and workmen, at all reasonable times during the said term, to enter upon the said premises to inspect the same (*b*); AND will not at any time during the said term carry on or commit or permit to be carried on or committed upon the said premises any [offensive] business or occupation or nuisance, but [will use his utmost endeavours to hinder and prevent by all legal and available means the user thereof for the purposes of any [such] business or occupation, or so as to cause a nuisance by any under-lessee, tenant, or occupier thereof, or other person whomsoever, and (*c*)] will use the same [or cause and procure the same to be used] as a private dwelling-house only (*d*); AND will not assign, underlet, or part with the possession of the said premises or any part thereof without the consent in writing of the lessor [provided that such consent shall not be unreasonably withheld (*e*)]; PROVIDED ALWAYS, that, if and when-

—and yield up at the end of the term;

—and that landlord may enter to inspect;

—and that the same shall be used as a dwelling-house only;

—not to assign or underlet.

Proviso for re-entry.

(*a*) See for a fuller form, *infra*, p. 407.

(*b*) See for a fuller form, *infra*, p. 407.

(*c*) See *Toleman* v. *Portbury*, L. R. 5 Q. B. 288; *Hall* v. *Ewin*, 37 Ch. D. 74; *Wilson* v. *Twamley*, [1904] 2 K. B. 99; *Ricketts* v. *Enfield Churchwardens*, [1909] 1 Ch. 544. And as to the lessee's liability for the acts of his assigns generally, see *Powell* v. *Hemsley*, [1909] 2 Ch. 252.

(*d*) As to the construction of such a covenant, and what is prohibited by it, see Davidson's Prec. Conv. 3rd ed. vol. v. p. 153, n. (*o*), and in addition to the cases there cited, *German* v. *Chapman*, 7 Ch. D. 271; *Rolls* v. *Miller*, 27 Ch. D. 71; *Tod-Heatly* v. *Benham*, 40 Ch. D. 80; *Re Davis and Cavey*, *ib.* 601; *Hobson* v. *Tulloch*, [1898] 1 Ch. 424.

(*e*) Or "shall not be withheld if it shall have been proved to his satisfaction that the proposed assignee or under-tenant is a respectable and responsible person or body." Such a proviso constitutes a qualification of the covenant, and enables the lessee to assign without consent if the lessor

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ever (*a*) any part of the said rent shall be in arrear for twenty-one days, whether lawfully demanded or not, or there shall be a breach of any of the covenants by the lessee herein contained (*b*), the lessor may re-enter upon the said premises, and immediately thereupon the said term shall absolutely determine. AND THE lessor doth hereby covenant with the lessee, that the lessee, performing and observing all the covenants by the lessee herein contained, may quietly hold and enjoy the said premises during the said term, without any interruption by the lessor, or any person claiming through him (*c*).

Covenant by the lessor for quiet enjoyment.

unreasonably withholds his consent or imposes improper terms; but it does not amount to a contract on the lessor's part to give a consent. See *Sear* v. *House Property, &c. Society*, 16 Ch. D. 387; *Andrew* v. *Bridgman*, [1908] 1 K. B. 596; *Evans* v. *Levy*, [1910] 1 Ch. 452. A limited company is not within the meaning of the words "a respectable or responsible person" in such a covenant: see *Willmott* v. *London Road Car Co., Ltd.*, [1910] 1 Ch. 754.

(*a*) It seems desirable to add the words "and whenever." See *Shepherd* v. *Berger*, [1891] 1 Q. B. 597.

(*b*) In *Harman* v. *Ainslie*, [1903] 2 K. B. 241, where the lease contained affirmative and negative covenants and a proviso for re-entry on breach by the tenant of "the covenants hereinbefore contained and on his part to be performed," it was held that the landlord had no right of re-entry on breach of the negative covenants only; but the decision was reversed in the Court of Appeal, [1904] 1 K. B. 698.

(*c*) It may be convenient to mention here that the only clauses understood to be strictly usual in a lease of a house, are: covenants by the lessee to pay rent and taxes not expressly payable by the landlord, to keep and deliver up the premises in repair, and to allow the lessor to enter and view the state of repair; a clause for re-entry in default of payment of rent; and the usual qualified covenant by the lessor for quiet enjoyment by the lessee. See *Hampshire* v. *Wickens*, 7 Ch. D. 555; *Re Lander and Bagley's Contract*, [1892] 3 Ch. 41; Davidson's Prec. Conv. 3rd ed. vol. v. pp. 50 *et seq.*, and (as to the form of the proviso for re-entry) *supra*, p. 395, n. (*a*). As to the effect of the covenant for quiet enjoyment, see *supra*, p. 395, n. (*b*).

The following is a form of covenant by the lessor giving the

PRECEDENT XCVIII.

OF A HOUSE IN A TOWN.

Interpretation clause.

PROVIDED ALWAYS, that unless such an interpretation is inconsistent with the context, the expression the lessor hereinbefore used shall include his heirs and assigns (*a*), and the expression the lessee hereinbefore used shall include his executors, administrators, and assigns. IN WITNESS, &c.

lessee an option of purchase, and intended to follow immediately after the covenant for quiet enjoyment. Special stipulations as to the title should be added, if required. It should be borne in mind that inconvenience frequently arises when an option of this kind is exercised after the death of the lessor, and that trustees cannot (except under the Settled Land Act, 1889, Appendix X., *infra*) give such an option.

Covenant by the lessor giving to the lessee the option of purchasing the freehold (*b*).

"AND THAT if the lessee shall be desirous to purchase the fee simple of the said dwelling-house and premises for the sum of £——, and of such desire shall give to the lessor, or leave at his last known place of abode in England, notice in writing on or before the —— day of —— [*six and a half years from the commencement of the term*], then the lessor will, at the expiration of six calendar months after the day when such notice shall be so given or left, upon payment of the said sum of £——, and of all rent then accrued due, and at the cost in all respects of the lessee, convey and assure the same premises, and the inheritance thereof, in fee simple [except as aforesaid], unto such person or persons as the lessee shall direct."

As to what costs are included, see *Fitzsimmons* v. *Lord Mostyn*, [1904] A. C. 46.

(*a*) If the lessee himself holds for a term, substitute "executors, administrators, or assigns." As to interpretation clauses generally, see *supra*, p. 238, note. And as to leases of registered land, see *supra*, pp. 104, 105.

(*b*) As to options of this nature, see *Woodall* v. *Clifton*, [1905] 2 Ch. 257; *Worthing Corporation* v. *Heather*, [1906] 2 Ch. 532. They do not run with the reversion, and unless made exerciseable within the period fixed by the rule against perpetuities are apparently void.

XCIX.

PRECEDENT XCIX.

OF A HOUSE, LESSOR REPAIRING OUTSIDE AND INSURING.

LEASE *of a* HOUSE *with* COVENANTS *by the* LESSOR *to* REPAIR *the* OUTSIDE *and* INSURE.

Parties.

Witnesseth.

Demise.

Covenant by the lessee to pay rent and taxes, &c., except specified charges.

To repair interior;

—and yield up in repair, &c.;

—not to vitiate lessor's insurance.

Proviso for re-entry.

Covenant by the lessor for quiet enjoyment;

—to pay specified charges;

to repair exterior;

—and insure;

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*lessor*] (hereinafter called the lessor), of the one part, and B., of, &c. [*lessee*] (hereinafter called the lessee), of the other part, WITNESSETH, that the lessor doth hereby demise unto the lessee [*parcels, exceptions, habendum, and reddendum, supra*, p. 396]. AND the lessee, for himself and his assigns, doth hereby covenant with the lessor that he the lessee, during the said term will pay [*rent and taxes, &c.*, pp. 397, 398, *supra*], except the land tax (*a*); AND will keep the interior of the said premises (except the main timbers) in good condition and complete repair, and without any alteration (*b*) except such as the lessor shall approve of [*remainder of lessee's covenants*, p. 399, *supra*]; AND will not do or suffer anything whereby the insurance hereinafter covenanted by the lessor to be effected and kept up shall be vitiated [*Proviso for re-entry*, p. 399]. AND the lessor doth hereby for himself and his assigns covenant with the lessee [*for quiet enjoyment, supra*, p. 400]; AND FURTHER, that the lessor will during the said term pay the land-tax for the time being payable in respect of the said premises (*c*), AND keep the walls, main timbers, and exterior parts of the said premises in good condition and complete repair; AND ALSO will insure and (unless where such insurance shall be vitiated by any act of the lessee) keep insured the said premises against loss or damage by fire in the sum of

(*a*) Any other charges to be paid by the lessor should be here mentioned.

(*b*) The word, in covenants of this nature, is to be limited to alterations affecting the form or structure of the demised building: see *Bickmore* v. *Dimmer*, [1903] 1 Ch. 158.

(*c*) See note (*b*) on p. 393, *supra*.

£—— at least; AND WILL, on request, produce to the lessee the policy of such insurance and the current year's receipt for the premium thereon, AND WILL, if the said premises shall be destroyed or damaged by fire, apply all monies received by virtue of such insurance in reinstating or repairing the premises destroyed or damaged and (unless the insurance shall be vitiated as aforesaid) make up any deficiency out of his own monies: AND ALSO, that if the said premises shall be destroyed or damaged by fire [flood, storm, tempest, or other inevitable accident], then (unless [in the case of such destruction or damage being caused by fire] the insurance shall be vitiated as aforesaid), the whole or a proportionate part of the said rent according to the nature and extent of the damage done shall be suspended until the premises shall have been reinstated. AND if the premises shall not be reinstated within *six* calendar months afterwards, the lessee may surrender the premises to the lessor, without prejudice nevertheless to any claim by either party in respect of any antecedent breach of any of the covenants and conditions herein contained other than the covenant to reinstate. PROVIDED ALWAYS, and it is hereby agreed that [*continue Arbitration clause*, p. 391, *supra*; *Interpretation clause*, *supra*, p. 401]. IN WITNESS, &c.

PRECEDENT XCIX.
OF A HOUSE, LESSOR REPAIRING OUTSIDE AND INSURING.
—produce policy;
—and apply policy monies in reinstating the property, and make up any deficiency out of his own monies.
Rent to be suspended until damage made good.
Arbitration clause.

C.

UNDERLEASE *at an advanced rent*, SUBJECT *to the* COVENANTS *of the original* LEASE.

PRECEDENT C.
UNDERLEASE.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*under-lessor*] (hereinafter called the landlord (*a*), of the Parties.

(*a*) "Landlord" and "tenant" are in this Precedent substituted for "lessor" and "lessee" to avoid any confusion in terms, the word "lessee" being here applied only to the lessee under the original lease.

PRECEDENT C.

UNDERLEASE.

one part, and B., of, &c. [*under-lessee*] (hereinafter called the tenant), of the other part. WHEREAS, by an indenture of lease, dated the —— day of ——, and expressed to be made between [*parties*], ALL THAT [*parcels from the original lease*], with the appurtenances, were demised by the said [*original lessor*] to the landlord, for the term of —— years, from the —— day of ——, 19—, at the yearly rent of £——, and subject to covenants by the lessee, and conditions therein contained. AND WHEREAS the landlord has agreed with the tenant for an underlease of the premises upon the terms hereinafter expressed. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of £——, this day paid by the tenant to the landlord (the receipt whereof the landlord doth hereby acknowledge), HE the landlord doth hereby demise unto the tenant ALL the messuage or dwelling-house, coach-house, stables, hereditaments, and premises comprised in and expressed to be demised by the hereinbefore recited indenture, TO HOLD the said premises unto the tenant, for the term of —— years from the —— day of ——, 19— (*b*); YIELDING therefor, during the said term hereby granted, the yearly rent of £——, clear of all deductions, by equal quarterly payments on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of —— in every year, the first such quarterly payment to be made on the —— day of ——, 19— [and the last to be made in

Recital of lease (*a*).

Agreement for underlease.

Witnesseth.

Consideration.

Receipt.

Demise.

Parcels.

Habendum.

Reddendum.

(*a*) It is convenient to recite the original lease in an underlease, especially where, as here, the under-lessee covenants by reference to the covenants in the lease. An underlease, framed without any recital of the original lease, does not differ in form from a lease, except that the rent is payable to, and the landlord's powers are exercisable by, the lessor, his executors, administrators, or assigns, as in the next Precedent, and that in the covenants some reference to the ground landlord and the provisions of the original lease will generally be necessary.

(*b*) *Nota bene*, that this term must expire before that granted by the head lease.

PRECEDENT C.

UNDERLEASE.

advance on the —— day of ——, immediately preceding the expiration of the said term] (*a*). AND the tenant doth hereby for himself and his assigns covenant with the landlord THAT he the tenant, during the said term hereby granted, will pay unto the landlord [*remainder of covenants to pay the rent, rates, &c., supra*, p. 397]; AND WILL perform and observe all the covenants by the lessee, and conditions contained in the hereinbefore recited indenture, and henceforth to be performed and observed (*b*), except the covenant for the payment of the said yearly rent of £—— by the same indenture reserved; AND WILL keep the landlord indemnified against all actions, expenses, claims, demands, and liability, on account of the breach of the said covenants and conditions (except as aforesaid), or any of them. [*Proviso for re-entry, supra*, p. 399.] AND THE landlord doth hereby covenant with the tenant, that he the tenant [*remainder of covenant for quiet enjoyment, supra*, p. 400]. AND FURTHER, that he the landlord, will during the said term hereby granted, duly pay the said yearly rent of £—— by the hereinbefore recited indenture reserved, AND WILL at all times keep the tenant, his estate and effects, indemnified against all actions, expenses, claims and demands, on account of the non-payment of the said rent, or any part thereof. AND the landlord doth hereby acknowledge the right of the tenant to production of the hereinbefore recited indenture, and to delivery of copies thereof, and undertake for the safe custody thereof [*Interpretation clause, supra*, p. 382, *with the variation in note* (*b*), p. 382]. IN WITNESS, &c.

Covenants by tenant;

—to pay rent and taxes;

—to perform covenants in original lease;

—except the covenant for payment of rent;

—to indemnify the landlord.

Covenants by landlord for quiet enjoyment;

—to pay the original rent;

—and indemnify the lessee;

—and acknowledges right to production, &c., of lease.

(*a*) See *supra*, p. 397, n. (*a*).

(*b*) That this covenant has the same effect as if the covenants in the original lease had been repeated here, see *Piggott* v. *Stratton*, Johns. 341, 1 De Gex, F. & J. 33; and see also *Haywood* v. *Silber*, 30 Ch. D. 404.

CI.

PRECEDENT CI.

OF A HOUSE AND FURNITURE.

LEASE *of a* HOUSE *and* FURNITURE *for a* TERM DETERMINABLE *at the option of the tenant* (*a*).

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*lessor*] (hereinafter called the lessor), of the one part, and B., of, &c. [*lessee*] (hereinafter called the lessee), of the other part, WITNESSETH that the lessor doth hereby DEMISE unto the lessee, ALL THAT messuage or dwelling-house, with the coach-house and stables at the back thereof, situate and numbered ——, in —— street, in the parish of——, in the county of ——, TOGETHER with the furniture and other effects specified in the schedule hereto, TO HOLD the premises unto the lessee, for the term of twenty-one years, from the —— day of ——, 19—; YIELDING therefor [*reservation of rent payable quarterly, ut supra*, p. 404]. AND THE LESSEE doth hereby for himself and his assigns covenant with the lessor THAT [*covenants to pay the rent, rates, &c., ut supra*, pp. 397, 398]; AND ALSO will, during the said term, at his and their own cost, well and sufficiently repair, maintain, and keep the said messuage or dwelling-house, coach-house, and stables (hereinafter generally referred to as the said dwelling-house and stabling) and all new fixtures and additions thereto in good condition and complete repair; AND in particular will once at least in every three years of the said term, paint with three coats of good oil colours all the outside wood, iron, and stucco work previously painted, AND ONCE at least in every seven years of the said term, clean and re-point the outside stone and brick-

Parties.

Witnesseth.

Demise.

Parcels.

Furniture.

Habendum.

Reddendum.

Covenants by lessee to pay rent, rates, &c., and to repair.

To paint outside once in three years,

and inside once in seven years.

(*a*) The lessor is supposed in this Precedent to be himself a leaseholder, and the lease is therefore really an underlease, as to which see *supra*, p. 404, n. (*a*). If the lessor be the freeholder, it may be desirable to apportion the rent, which, if not apportioned, will issue exclusively out of the land, and to give a power of distress (for what it may be worth) in respect of the furniture rent.

PRECEDENT CI.

OF A HOUSE AND FURNITURE.

work; AND ONCE at least in every seven years of the said term paint with two coats of good oil colours all the inside wood, iron, and other work previously painted [and afterwards varnish the parts usually varnished, and also wash, distemper, and whiten the ceilings, and re-colour and properly re-paper the walls, in the same ornamental style as at present], AND WILL not, without the previous licence in writing of the lessor, make any addition to the said dwelling-house and stabling, or any alteration (*a*) therein or in the elevation thereof; AND WILL preserve the said furniture and other effects specified in the said schedule from being destroyed or damaged (reasonable wear and tear thereof excepted), AND WILL replace with articles of a similar kind and of equal value such parts of the said furniture and other effects as shall have been destroyed or damaged; AND WILL permit the lessor, twice in every year during the said term, to enter upon the said dwelling-house and stabling to view the condition thereof, and of all wants of repair then and there found, to give or leave a notice in writing for the lessee to amend the same; AND WILL at his own expense, within three calendar months from the giving or leaving such notice, well and sufficiently amend the same accordingly (*b*); AND ALSO will, during the said term, at the like expense, keep the said premises insured (*c*) against loss or damage by fire in such office as the lessor shall approve, in the sums following, at the least, that is to say, the said dwelling-house and stabling in the sum of £——, and the said furniture and other effects specified in the said schedule, or substituted for the same, in the sum of £——; AND

Not to make alterations.

To preserve furniture, and to replace.

To permit lessor to enter and view and give notice of want of repair.

To repair on notice.

To keep the premises insured.

(*a*) See note (*b*), at p. 402, *supra*.

(*b*) That these covenants, and the previous general covenant to repair, are independent covenants, and that the lessor may sue on breach of the covenant to repair without giving any notice under this latter one, see *Baylis* v. *Le Gros*, 4 C. B. (N. S.) 537; *Few* v. *Perkins*, L. R. 2 Ex. 92.

(*c*) See *supra*, p. 398, n. (*b*).

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will [*produce the policy and expend insurance monies, ut supra*, p. 398]; and also will not remove any of the said furniture and other effects specified in the said schedule from the said dwelling-house and stabling without the previous licence in writing of the lessor. And will not [*assign, &c., without licence, supra*, p. 399]; and will at the expiration, or sooner determination of the said term, deliver up to the lessor the said premises (including the said furniture and other effects specified in the said schedule or substituted for the same under the covenant hereinbefore contained), with all new fixtures and additions thereto in such good condition and complete repair as aforesaid. Provided always [*proviso for re-entry, supra*, pp. 399, 400]. Provided always that the lessee may at the end of the seventh or fourteenth year of the said term, determine the same upon giving to the lessor (*a*), or leaving for him at his last known place or places of abode in England six calendar months' previous notice (*b*) in writing of the intention so to do, and upon paying the rent and performing and observing the covenants by the lessee herein contained up to the day of the said term being so determined. [*Covenant by the lessor for quiet enjoyment, ut supra*, p. 400, *down to* "interruption" *and proceeding* "by the lessor or —— of —— [*the ground landlord*] or any person claiming under either of them (*c*)." *Interpretation clause, supra*, p. 401.] In witness, &c.

Not to remove furniture.

Not to assign, &c.

To deliver up the premises.

Power for lessee to determine the lease on giving notice.

THE SCHEDULE above referred to.

(*a*) See *Hogg* v. *Brooks*, 15 Q. B. D. 256, showing that the following alternative is necessary.

(*b*) No particular form of notice is required, but it must be clear and unambiguous: a notice in the alternative is bad. See *Bury* v. *Thompson*, [1895] 1 Q. B. 231; *ib.* 696.

(*c*) Unless the lessor expressly covenants to pay the rent and perform the covenants under his own original lease, the covenant for quiet enjoyment should be extended as in the text to the acts of the ground landlord and those claiming under him.

CII.

Lease *of a* Farm (*a*).

Precedent CII. — Of a farm.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*lessor*] (hereinafter called the lessor), of the one part, and B., of, &c. [*lessee*] (hereinafter called the lessee), of the other part, WITNESSETH, that the lessor doth hereby demise unto the lessee ALL THAT farm and lands, in the parish of ——, in the county of ——, called —— farm, with the farm-house and other buildings thereon, the particulars whereof are specified in the schedule hereto, EXCEPT and reserved, out of this demise, all timber and other trees, and the right to enter and cut and remove the same, TO HOLD the premises, except as aforesaid, unto the lessee, for the term of —— years from the date of these presents; YIELDING therefor, during the said term, the yearly rent of £——, clear of all deductions, by equal half-yearly payments, on the —— day of —— and the —— day of —— in every year, the first of such payments to be made on the —— day of —— next [and the last to be made in advance on the —— day of ——, immediately

Parties. Witnesseth. Demise. Parcels. Exception of timber. Habendum. Reddendum.

(*a*) This is a Precedent of a simple farming lease, and applicable to a taking from any time in the year. The two following Precedents contain different forms of the stipulations usually inserted in farming leases of a more stringent character, those in the next Precedent being adapted to a taking from Lady Day. Precedent CV. is adapted for a Michaelmas take.

The Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28), does not appear to necessitate any considerable alteration in a farming lease. See Precedent CV. and the notes thereto. A substituted scale of compensation for the improvements mentioned in the third part of the first schedule to that Act may, however, as in that Precedent, be provided pursuant to the 4th sect. The Act (which is a consolidating enactment) has repealed the Agricultural Holdings Act (England), 1883, the Agricultural Holdings Acts, 1900 and 1906 (except as to Scotland), some parts of the Tenants' Compensation Act, 1890, and the Market Gardeners' Compensation Act, 1895. See also the Allotments and Cottage Gardens Compensation for Crops Act, 1887, and *Mears* v. *Callender*, [1901] 2 Ch. 388.

PRECEDENT CII.

OF A FARM.

preceding the expiration of the said term] (*a*). AND THE lessee doth hereby for himself and his assigns covenant with the lessor, that he the lessee, during the said term, will [*pay rent, rates* (*b*), *&c., and keep insured* "said farm-house and buildings," *and produce policy and apply insurance monies, ut supra*, pp. ,]; AND WILL keep the said farm-house and buildings, and all things in and about the same, and all fences, ditches, drains, watercourses, gates, fixtures and things upon or about the said farm and lands, in good condition and complete repair, and without any alteration, except such as the lessor shall approve of; AND WILL cultivate, manure, and manage the said farm and lands in a fair and proper manner according to the most approved course of husbandry (*c*), AND WILL not convert into arable land any land now in pasture or meadow, without the consent of the lessor; AND WILL, at the expiration or sooner determination of the said term, yield up the same premises in such good condition and complete repair, and in fair and proper order, as aforesaid, unto the lessor; AND THAT the lessor and his agents, surveyors, and workmen, may at all reasonable times during the said term, enter upon the said premises to inspect the same, and to cut and remove timber and other trees. [*Covenant against assignment; proviso for re-entry; covenant by lessor for quiet enjoyment; ut supra*, pp. 399, 400. *Interpretation clause, supra*, p. 401.] IN WITNESS, &c.

Covenants by the lessee;

to keep the premises in good condition.

and properly cultivated;

not to convert pasture or meadow into arable;

and yield up at the end of the term;

and that landlord may enter to inspect.

THE SCHEDULE above referred to.

(*a*) See *supra*, p. 397, n. (*a*).

(*b*) See p. 412, *infra*, n. (*a*).

(*c*) In *Meux* v. *Cobley*, [1892] 2 Ch. 253, it was held that a covenant substantially in this form did not preclude the lessee from converting the farm into a market garden, *sed quære*. And compare *Kehoe* v. *Marquis of Lansdowne*, [1893] A. C. 451; and Lord Blackburn's judgment in *Westropp* v. *Elligott*, 9 App. Cas. 815. But see now the Agricultural Holdings Act, 1908, s. 26, which appears to give to the tenant in substance complete control as regards cultivation of arable land so long as the holding is not deteriorated.

CIII.

Lease *of a* Farm *by a* Tenant *for* Life *under a* Power *in a will.*

Precedent CIII.

Of a farm by tenant for life under power.

THIS INDENTURE, made the —— day of ——, BETWEEN A., of, &c. [*tenant for life and donee of power*], of the one part, and B., and C., both of ——, farmers and co-partners [*lessees*] (hereinafter called the lessees), of the other part, WITNESSETH, that the said A., in exercise of a power for this purpose to him given by the will, dated the —— day of ——, 19—, and proved in the —— Registry on the —— day of ——, 19—, of G. B., deceased, and of every or any statutory or other power enabling him (*a*), doth hereby DEMISE unto the lessees, ALL THAT [*parcels, supra*, p.]. EXCEPT and reserving unto the said A., and his assigns, and other the person or persons for the time being entitled to the said premises in reversion immediately expectant on the determination of the term hereby granted (all of whom are hereinafter included in the expression "the reversioner or reversioners"), all timber and other trees, wood, and underwood, now, or at any time during the said term hereby granted, growing upon the said premises, and all mines and minerals lying in or under the same, with liberty for the reversioner or reversioners, and his or their lessees, agents, and workmen, at all times, with or without horses, carts and carriages, to enter upon the said premises, and every part thereof, and to fell, stub up, and carry away the said

Parties.

Witnesseth.

Demise.

Parcels.

Exception

—of timber and minerals,

—with liberty to enter and work,

(*a*) As to the power of leasing conferred on tenants for life by the Settled Land Acts, see note (*a*) to Precedent CVI., *infra*, p. 427. But these powers are cumulative, and do not affect the powers of leasing contained in a settlement, except by rendering the consent of the tenant for life necessary to the exercise of any such power by the trustees of the settlement or other person. (See sect. 56 of the Act of 1882 (App. VII., *infra*), and the Act of 1884 (App. VIII., *infra*), ss. 6 and 7.)

PRECEDENT CIII.

OF A FARM BY TENANT FOR LIFE UNDER POWER.

timber, trees, and underwood, and to search for, work, dress, manufacture, render merchantable, and carry away the said mines and minerals, and for the purposes aforesaid to do all such acts and things as he or they shall think necessary or expedient; AND in particular to occupy and use, exclusively or otherwise, so much of the land hereby demised as he or they shall reasonably require for any such purpose, the reversioner or reversioners compensating the lessees by abatement of rent or otherwise, according to the circumstances, for any damage or injury sustained by them; AND ALSO, except and reserving unto the reversioner or reversioners all the game upon the said premises, with liberty for him and them, and his and their servants, friends, and all other persons by his or their permission, to preserve and hunt, kill, take, or destroy the same upon the said premises, at all times during the term hereby granted, as regards game other than hares and rabbits exclusively, and as regards hares and rabbits concurrently with any other person or persons for the time being legally entitled to the same or the like right (*b*). TO HOLD the premises (except as aforesaid) UNTO the lessees, for the term of —— years from the 25th day of March, 19—; YIELDING therefor during the said term the yearly rent of £——, clear of all deductions, by equal half-yearly payments on the 25th day of March and the 29th day of September in every year, the first

—and to use land on paying compensation.

Exception of game (*a*) with exclusive liberty to hunt and destroy.

Habendum.

Reddendum of certain yearly rent,

(*a*) Under sect. 6 of the Rating Act, 1874 (37 & 38 Vict. c. 54), the tenant may be entitled, in the absence of stipulation, to deduct from his rent a proportion of rates in respect of the right of sporting here reserved. See *Duke of Devonshire* v. *Barrow Hæmatite Steel Co.*, 2 Q. B. D. 286; *Chaloner* v. *Bolckow*, 3 App. Cas. 933.

(*b*) See the Ground Game Act, 1880 (43 & 44 Vict. c. 47). The Act applies to owning occupiers as well as to tenants: *Anderson* v. *Vicary*, [1900] 2 Q. B. 287; and as to agreements under sect. 3, in contravention of the occupier's right to destroy ground game, see *Sherrard* v. *Gascoigne*, [1900] 2 Q. B. 279; *Stanton* v. *Brown*, [1900] 1 Q. B. 671. The Act has been amended by the Ground Game (Amendment) Act, 1906 (6 Edw. 7, c. 21).

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OF A FARM BY TENANT FOR LIFE UNDER POWER.

of such payments to be made on the 29th day of September, 19—, AND ALSO yielding by like half-yearly payments the additional yearly rent of £10 for every acre (and so in proportion for a less quantity) of pasture or meadow land which shall during the said term be broken up or converted into tillage without the previous consent of the reversioner or reversioners; THE FIRST or only payment of the said additional rent to be made on such of the said half-yearly days of payment as shall happen next after the same shall become payable, and the payment thereof, if reserved yearly, to continue thenceforth for the residue of the said term (*a*). AND the lessees do hereby for themselves and their assigns, and as separate covenants also each of them doth for himself and his assigns, covenant with the reversioner and reversioners, that they, the lessees, will PAY unto the reversioner or reversioners the said certain yearly rent of £——, and, if the same shall become payable, the said additional rent, at the times and in manner aforesaid, clear of all deductions except for land-tax (*b*); AND ALSO [*will pay rates, &c.*, "except land-tax," *supra*, p. 397]; AND ALSO will, during the said term at their own expense, well and sufficiently maintain, cleanse, and keep in good condition and complete repair, the said messuage or farm-house, and any other buildings now or at any time during the said term standing or erected upon the said premises, and all gates, rails,

—and of additional contingent rent.

Covenants by lessees,

—to pay the rents,

—rates and taxes;

—to repair (*c*);

(*a*) See *supra*, p. 396, n. (*a*), and *infra*, p. 421, n. (*b*).

(*b*) If no deduction in respect of the right of sporting is to be allowed, add, "and in particular without any deduction, under the Rating Act, 1874, in respect of the right of sporting."

(*c*) The special form of this covenant, and of the subsequent covenants to insure and to deliver up at the end of the lease, is due to the previous provision enabling the lessors to resume possession of parts of the land during the demise. In a lease not containing such a provision, these covenants would be similar to the corresponding covenants in the next Precedent.

PRECEDENT CIII.

OF A FARM BY TENANT FOR LIFE UNDER POWER.

fences, dikes, drains, water-courses, and appurtenances to the said premises (except such as shall be hereafter erected or made by the reversioner or reversioners, or any other person, under or by virtue of any reservation herein contained); AND ALSO will farm and cultivate the said premises in a husbandlike manner (*a*); AND ALSO will at all times during the said term, keep upon the said premises, cattle, horses, sheep, or other live stock, to the value of £— at the least; AND ALSO will, during the first seven years of the said term, expend in draining the said premises in such manner as the reversioner or reversioners or his or their agents shall approve, £— at the least; AND WILL also, at their expense, during the first seven years of the said term, expend in the erection of convenient and substantial barns, stables, sheds, or other buildings, on the said premises £— at the least; AND ALSO will permit the reversioner or reversioners, and his or their agents, servants, and workmen [*to enter and view the condition of the premises, and give notice of want of repair; and to repair upon notice, ut supra*, p. 407]; AND ALSO will keep insured against loss or damage by fire, in such office as the reversioner or reversioners shall approve, to the amount of two-thirds of their full value at the least, the said messuage or farm-house, and all other buildings, now or at any time hereafter erected by the lessees upon the said premises; AND WILL, when required, produce to the reversioner or reversioners, or his or their agent, the policy of such insurance, and the current year's receipt for the premium thereon; AND WILL permit the reversioner or reversioners, or the incoming tenant, and his and their bailiffs, servants, and workmen, from and after the 11th day of November immediately preceding the expiration of the said term to enter upon the said

—to cultivate;

—to keep live stock of a specified value on the premises;

—to expend money in draining,

—and in buildings.

To permit reversioners to enter and view;

—to keep buildings insured (*b*),

—and to produce policy.

To permit the reversioner or incoming tenant to enter and cultivate fallow land.

(*a*) See n. (*c*), *supra*, p. 410, and n. (*a*), *infra*, p. 423. A fuller form of this covenant is given p. 423, *infra*.

(*b*) See n. (*b*), p. 398, *supra*.

PRECEDENT CIII.

OF A FARM BY TENANT FOR LIFE UNDER POWER.

premises, and plough and cultivate the fallow land, as he or they shall think proper; AND for the purpose aforesaid to use and occupy such stables and sheds as he or they shall reasonably require for the accommodation of horses, carts, and other implements of agriculture without any charge in respect thereof; AND ALSO will, at the expiration or sooner determination of the said term, deliver up the said premises, together with any new buildings or erections thereon, built or erected by the lessees, and all fixtures and additions thereto (except such buildings and fixtures as the lessee shall by law be entitled to remove), in such condition and repair as aforesaid, and in all respects in such state and condition as shall be consistent with the due performance of the covenants hereinbefore contained; AND ALSO will sell to the reversioner or reversioners, or the incoming tenant, at a fair market price, all the dung and manure produced upon the said premises during the last year of the said term, and also all straw, hay, and other fodder not consumed before the expiration or sooner determination of the said term; AND WILL permit the same to be carted out or used or consumed on the premises by the purchaser or purchasers at usual and convenient times and places [*Proviso for re-entry, ut supra*, p. 399, *substituting* "reversioner or reversioners," *for* "lessor"]; AND THE said A. doth hereby covenant with the lessees, that the lessees, performing and observing all the covenants by the lessees herein contained, may hold and enjoy the said premises, during the said term, without any interruption by the said A., or any person claiming through or in trust for him, or under the said will of the said G. B.; AND ALSO that the reversioner or reversioners will during the said term pay the land-tax payable in respect of the premises. PROVIDED ALWAYS, that unless such an interpretation is inconsistent with the context, the expression the lessees

To deliver up premises with new buildings at end of term (*a*);

—and to sell to reversioner, or incoming tenant, manure and fodder,

—and to allow the same to be used on the premises.

Covenant for quiet enjoyment,

—and for payment of land tax.

Interpretation clause.

(*a*) See n. (*c*), p. 413, *supra*.

PRECEDENT CIII.

OF A FARM BY TENANT FOR LIFE UNDER POWER.

hereinbefore used shall include their executors, administrators, and assigns. IN WITNESS, &c.

THE SCHEDULE above referred to.

CIV.

PRECEDENT CIV.

BY TENANT BY THE CURTESY OF FREEHOLD FARM.

LEASE *of a freehold* FARM *of which the lessor is* TENANT *by the* CURTESY (*a*).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. [*husband*], of the one part, and C. D., of, &c. [*lessee*]

Parties.

(*a*) This Precedent is a specimen of a lease granted under the statutory powers given by sect. 46 of the Settled Estates Act, 1877 (40 & 41 Vict. c. 18), to tenants for life (see *Taylor* v. *Taylor*, L. R. 20 Eq. 297, and also *Taylor* v. *Taylor*, 1 Ch. D. 426, affirmed 3 Ch. D. 145) of settled estates, and to tenants by the curtesy, or in dower, and to husbands in right of a wife seised in fee, of unsettled estates. These powers correspond with, but are more extensive than, the powers contained in sect. 32 of 19 & 20 Vict. c. 120 (the former Settled Estates Act, now repealed). As regards settled estates, these powers are restricted by sect. 57 of the Settled Estates Act, 1877, to settlements made after 1st November, 1856, being the date when the former Settled Estates Act came into operation, the 44th section of which contained a similar restriction. They are not touched by the Settled Land Act, 1882 (App. VII., *infra*), which, though giving to tenants for life and other limited owners much larger powers of leasing (see the notes to Precedent CVI., *infra*), and various other powers, including a power of sale (as to which see note (*b*), p. 160, *supra*), has left unrepealed the whole of the Settled Estates Act, 1877, except sect. 17, relating to proceedings for the protection of settled estates, and repealed by sect. 36 of the Settled Land Act, 1882. The powers of the latter Act do not seem to be exercisable by or on behalf of a married woman seised in fee simple (see sect. 61, and compare sects. 2 and 58), or by a tenant in dower, but they do extend to a tenant by the curtesy, and the present lease might be expressed to be granted under those powers. And a married woman of full age can now, under the Married Women's Property Act, 1882 (App. XII., *infra*), dispose of property of which

(hereinafter called the lessee), of the other part, WITNESSETH, that HE the said A. B. in exercise of the power for this purpose vested in him by the Settled Estates Act, 1877, and of every and any other power enabling him in this behalf, doth hereby DEMISE unto the lessee ALL THAT [*parcels, supra*, p. 409], EXCEPT and reserved nevertheless out of this demise all mines and minerals, and all timber and other trees in, under, or upon the said premises, with liberty to enter, search for, obtain, cut, and remove the same. TO HOLD the premises (except as aforesaid) UNTO the lessee, for the term of twenty-one years from the —— day of ——, 19— (*a*); YIELDING therefor during the said term the yearly rent of £——, clear of all deductions (except for land tax), by equal half-yearly payments on the —— day of ——, and the —— day of ——, the first of such payments to be made on the —— day of —— next (*b*); THE SAID rent to be paid clear of all deductions except for land-tax. AND the lessee doth hereby for himself and his assigns covenant with the said A. B. (*c*), that he the lessee will, during the said term, pay unto the person or persons for the time being entitled to the said premises in reversion immediately expectant on the determination of the said term (all of whom are hereinafter included in the expression "the reversioner or reversioners") the said rent at the times and in manner aforesaid; AND WILL pay all taxes, rates, assessments, and

PRECEDENT CIV.

BY TENANT BY THE CURTESY OF FREEHOLD FARM.

Witnesseth.

Demise.

Exception.

Habendum.

Reddendum.

Covenants by the lessee

—to pay the rent

—and rates.

she is seised in fee simple for her separate use, and can, with the concurrence of her husband, dispose by deed acknowledged (see sect. 7 of the Conv. Act, 1881, Appendix IV., *infra*) of property of which she is seised in fee simple otherwise than for her separate use. See *supra*, pp. 135 and 180, nn.

(*a*) The term must not exceed, as to estates in England, twenty-one years, and as to estates in Ireland, thirty-five years, and must take effect in possession at or within one year next after the making of the lease: see sect. 46 of the Act.

(*b*) See *supra*, p. 396, n. (*a*).

(*c*) See *supra*, p. 397, n. (*b*). The benefit of the covenant will run with the reversion under sect. 10 of the Conv. Act, 1881.

PRECEDENT CIV.

BY TENANT BY THE CURTESY OF FREEHOLD FARM.

outgoings of every description, payable in respect of the said premises (*a*), except land-tax; AND will keep the said messuage, together with all fixtures therein, and all buildings for the time being on the said premises, and also the gates, fences, roads, drains, ditches, and watercourses belonging to or upon the said premises, in good condition and complete repair; AND will keep insured the said messuage and all buildings on the said premises against loss or damage by fire, in the —— Insurance Office for the sum of £—— at the least; AND WILL [*produce policy and apply insurance monies, ut supra*, p. 398]: AND will cultivate the said farm and lands in a good and husbandlike manner and so as not to injure or deteriorate the same or any part thereof; AND will not during the last year of the tenancy or after notice to quit has been given or received grow crops of the same kind in immediate succession (*b*); AND will not during the last year of the said term remove from the said premises, any of the hay, straw, muck, dung, or compost, there produced or made (*c*); AND will not break up or convert into tillage any of the meadow or pasture lands; AND will not cut down, lop, or destroy, any timber or other trees now or at any time during the demise in or upon the said premises; AND also will at the expiration or sooner determination of the said term deliver up to the reversioner or reversioners the said premises, with all buildings, erections, and fixtures, which at any time during the demise shall be added thereto (except such as the lessee shall by law be entitled to remove), in good condition and complete repair. PROVIDED ALWAYS, that if and whenever any part of the said rent shall be in arrear for twenty-eight days (*d*), whether legally demanded or not, or there

To keep in good repair, and to insure,

—and to cultivate properly.

Not to grow successive crops during last year.

Not to remove hay, &c., during the last year.

Not to break up pastures.

Not to cut timber.

To deliver up the premises.

Proviso for re-entry.

(*a*) See n. (*b*), p. 393, *supra*.

(*b*) See *supra*, p. 410, n. (*c*), and *infra*, p. 423, n. (*a*).

(*c*) This covenant binds the tenant not to remove any of the produce named, whether grown in the last year or earlier. See *Gale* v. *Bates*, 3 H. & C. 84.

(*d*) See sect. 46 of the Settled Estates Act, 1877, and sect. 14 of

shall be any breach of any of the covenants by the lessee herein contained, the reversioner or reversioners may re-enter upon the said premises, and thereupon the said term of —— years shall absolutely determine. [*Covenant by the lessor for quiet enjoyment, ut supra*, p. 400, *down to* "interruption," *and proceeding*, "by the said A. B. or any person claiming through him or through E. B. his late wife." *Interpretation clause, supra*, p. 415, *substituting* "lessee" *for* "lessees," *and* "his" *for* "their"] (*a*). IN WITNESS, &c.

THE SCHEDULE above referred to.

PRECEDENT CIV.

BY TENANT BY THE CURTESY OF FREEHOLD FARM.

CV.

LEASE *of a* FARM *from* YEAR *to* YEAR.

PRECEDENT CV.

OF A FARM FROM YEAR TO YEAR.

AN AGREEMENT (*b*) entered into the —— day of ——, 19—, BETWEEN A., of, &c. (hereinafter called the lessor), of the one part, and B., of, &c. (hereinafter called the lessee), of the other part. Parties.

THE LESSOR agrees to let, and the lessee agrees to take— Demise.

Parcels.

THE MESSUAGE farm and lands called —— Farm, situate in the parish of ——, in the county of ——, and consisting of the following particulars (that is to say) [*here set out the particulars in schedule form or otherwise*]. Parcels.

the Conv. Act, 1881 (Appendix IV., *infra*), and sect. 2 of the Conv. Act, 1892 (Appendix VI., *infra*), imposing limitations on the exercise of powers of re-entry. Under the Settled Land Act, 1882, s. 7, the limit is thirty days.

(*a*) The lessee must execute a counterpart of this lease. See sect. 46 of the Settled Estates Act, 1877.

(*b*) This Precedent is intended as a form of general applicability, but especially for a Michaelmas holding.

PRECEDENT CV.

OF A FARM FROM YEAR TO YEAR.

Exception of minerals,

—and trees.

EXCEPT (i.) all quarries, mines, stone, gravel, sand, clay, brick, earth, and other minerals (hereinafter collectively referred to as minerals): AND (ii.) ALL timber and other trees, pollards and saplings (hereinafter collectively referred to as timber) [*here insert any other exceptions*].

Reservations.

Reservation of liberty to work mines;

—to fell trees;

—making reasonable compensation;

—to resume lands for exchanges or consolidation of farms;

—making reasonable compensation.

Resumption by landlord,

—and to make improvements upon the premises.

And exclusive right of sporting.

RESERVING unto the lessor and all persons authorized by him: (i.) LIBERTY to search for, dig, get, dress, make merchantable, and carry away the said minerals, and to sink all necessary pits and shafts, and make and erect all necessary erections, machinery, roads, and other conveniences and things for the purpose: (ii.) LIBERTY to fell, cut, carry away, and dispose of the said timber; MAKING to the lessee reasonable compensation for all damage occasioned by the exercise of the liberties hereinbefore reserved: (iii.) LIBERTY to resume (*a*) any part of the said premises for the purpose of exchanging intermixed or detached lands, or of consolidating farms: MAKING to the lessee reasonable compensation, either by the substitution of other lands or by reduction of rent at the option of the lessor: (iv.) LIBERTY to enter for the purpose of building upon, planting, draining, and improving the premises, and of diverting and altering roads and water-courses: AND (v.) THE EXCLUSIVE right (subject to the Ground Game Act, 1880, and the Ground Game (Amendment) Act, 1906) of shooting, sporting, fishing, and preserving game, rabbits, wild-fowl, and fish (*b*).

(*a*) See the Agricultural Holdings Act, 1908, s. 23, which enables land to be resumed for various other purposes, and empowers the tenant to treat a notice to resume part as equivalent to notice to quit the whole. Whether this would apply to a notice to resume under the liberty in the text seems doubtful.

(*b*) See *Morgan* v. *Jackson*, [1895] 1 Q. B. 885.

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OF A FARM FROM YEAR TO YEAR.

Term.

Term.

FOR one year from the 29th day of September, 19—, and so on from year to year until the demise shall be determined at the end of the first or any subsequent year by either party giving to the other not less than twelve calendar months' previous notice in writing (*a*).

Rents.

Reddendum;

—of certain yearly rent;

—and additional contingent yearly rents;

—for ploughing up meadow;

—and for improvements;

—when to be paid.

YIELDING therefor during the demise the rents or sums following: (i.) THE CERTAIN yearly rent of £——, by equal half-yearly payments on the 25th day of March and the 29th day of September in every year, the first half-yearly payment to be made on the 25th day of March, 19—, and the last to be made in advance on the —— day of —— immediately preceding the expiration of the said term. (ii.) THE ADDITIONAL CONTINGENT yearly rents following: (1) £—— for every acre (and so in proportion for any less quantity) of land now meadow or pasture which shall be broken up or converted into tillage: (2) £5 for every £100 (and so in proportion for any less sum) that shall be expended by the lessor with the consent of the lessee in building upon, draining, or improving the premises [*here insert any additional yearly rents that may be agreed upon*]. THE SAID additional contingent yearly rents to be paid half-yearly on the days aforesaid, and the first payment thereof respectively to be made on such of the said half-yearly days as shall first occur after the event on which they are respectively made payable, and the last to be made in advance on the —— day of —— immediately preceding the expiration of the said term (*b*). (iii.) AND ALL THE SAID several certain

(*a*) See note (*a*) on p. 383, *supra*.

(*b*) Before the Agricultural Holdings Act, 1908, it was usual to reserve penal rents in respect of improper cropping and disposal of produce. But sects. 25 and 26 of that Act appear to render such a reservation practically useless.

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OF A FARM FROM YEAR TO YEAR.

and contingent yearly and other rents to be paid, clear of all deductions.

Agreements by Lessee.

Agreements by lessee

THE lessee hereby agrees with the lessor as follows:

Payments.

—to pay rent;

(i.) To pay the said certain yearly rent and (if the same respectively shall become payable) the said additional contingent and other rents at the times and in manner hereinbefore appointed for payment thereof, clear

—and taxes;

of all deductions. AND (ii.) ALL existing and future taxes, rates, assessments and outgoings for the time being payable either by landlord or tenant in respect of or charged upon the premises (*a*).

Residence.

—to reside;

To reside personally in the said messuage.

Repairs.

—to repair;

To keep the said messuage, together with all fixtures and additions thereto, and all buildings (except the main timbers, tiles, roofs, and walls), and also the thatched roofs, pumps, gates, stiles, rails, fences, walls, bridges, dams, floodgates, roads, footpaths, ditches, soughs, and watercourses in good repair and condition, the lessor allowing timber in the rough, bricks, lime, and straw for thatching, but the lessee doing or paying for the cartage.

Insurance.

—to insure;

(i.) To insure the said messuage and all buildings [in the joint names of the lessor and lessee (*b*)] in the ——

(*a*) See note (*b*), p. 393, *supra*.
(*b*) See note (*b*), on p. 398, *supra*.

Insurance Office, or some other insurance office approved of by the lessor, for the sum of £—— at least. (ii.) To produce, when required by the lessor or his agent, the policies of insurance and receipts for premiums and other sums payable for effecting and keeping on foot the said insurance. AND (iii.) To expend all monies received in respect of such insurance in repairing and reinstating the premises damaged or destroyed by fire.

—to produce policies and receipts for premiums;

—and expend insurance monies in reinstating the premises;

Cultivation and Management.

(i.) To cultivate the said farm and lands in a good and husbandlike manner and so as not to injure or deteriorate the same or any part thereof. (ii.) AND in particular during the year before the expiration of the tenancy or after notice to quit has been given or received not to grow crops of the same kind in immediate succession (*a*). (iii.) To purchase and lay upon the said lands every year such lime, muck, and other manure as shall be proper for the sufficient cultivation thereof. (iv.) ONCE a year to brush and trim the hedges requiring to be brushed and trimmed, and to lay and plash such as require to be laid and plashed, and to remove or burn on the ground forthwith all the brushings and trimmings. (v.) ONCE a year to cleanse the ditches, gutters, and watercourses, and in case of default thereof in the last year, to permit the lessor and all persons authorized by him to enter and cleanse the said ditches, gutters, and water-

—to farm in a husbandlike manner;

—and not to grow same kind of crop in succession during last year of tenancy;

—to purchase lime;

—to brush hedges;

—to cleanse ditches;

(*a*) The insertion of express provisions as to the mode of cropping and the disposal of produce, except possibly as regards the last year of the tenancy, appears to be of very doubtful utility, in consequence of the freedom conferred upon the tenant by sect. 26 of the Agricultural Holdings Act, 1908; and although the language of the proviso in the first sub-section of sect. 26 suggests that such provisions may not be improper or altogether useless, especially in relation to the disposal of produce, it is conceived that they will seldom be inserted, and they are therefore omitted in the Precedent.

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courses, and to repay the expenses thereof. (vi.) To preserve the timber from being injured or destroyed, and not to cut, top, or lop any of the same except pollards usually topped. (vii.) To weed and defend the young quick in the fences. (viii.) To level all mole-hills and ant-hills, and endeavour to destroy all moles and vermin. (ix.) PREVIOUSLY to the month of August in every year to pull up or mow all thistles, dock, nettles, and other weeds growing whether upon the said premises, or upon the roads or waste lands adjoining [*here insert any other special stipulations relating to management*].

—to preserve timber;
—to weed quick;
—to level ant-hills;
—to mow thistles;

Stipulations in favour of the Lessor.

(i.) To permit the lessor and his agents and others in his employ at all reasonable times during the demise to enter to view the state and condition of the premises. (ii.) To preserve (subject to the Ground Game Act, 1880, and the Ground Game (Amendment) Act, 1906) all game and fish exclusively for the lessor, and all persons authorized by him; and to warn off trespassers. (iii.) To permit the lessor to bring any action or other proceeding in the name of the lessee against any person or persons who may trespass in pursuit of game, on indemnifying the lessee against all expense occasioned thereby.

—to permit the lessor to enter to view the premises;
—to preserve game;
—to permit lessor to bring actions against trespassers in lessee's name;

Acts prohibited.

(i.) NOT to break up or convert into tillage any of the meadow or pasture lands, or mow any part thereof more than once in any year, or mow any meadow or pasture land two years in succession without laying and spreading after each mowing —— tons at least of good rotten dung on each acre of such land. (ii.) NOT to cut down, lop,

—not to break up meadow or pasture (*a*);
—not to cut trees, &c.;

(*a*) This stipulation is not prohibited by the Agricultural Holdings Act, 1908; see sect. 26 (4).

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or destroy any timber. (iii.) NOT during the last six calendar months to let off any herbage, grass, root, crops, or other keep, nor to agist any cattle or other animals without the previous licence in writing of the lessor or his agent [*here insert any other prohibited acts*]. AND (iv.) NOT at any time to assign, underlet, or part with the possession of any part of the said premises without the previous licence in writing of the lessor.

—not to let off keep during the last year;

—not to assign or underlet;

Expiration of the Lease.

(i.) To permit the lessor or the incoming tenant to enter to sow with the spring or Lent corn in the last year of the demise, clover, or grass seeds, and to give to the lessor ten days' previous notice in writing of the intention of sowing such spring or Lent corn. (ii.) To deliver up the premises and all buildings, fixtures, and additions thereto (except such as the lessee may be entitled to remove under any Act of Parliament, and which the lessor shall not under the powers of any such Act have elected to purchase), in such good and tenantable repair as aforesaid, and in all respects in such state and condition as shall be consistent with the due performance of the agreements herein contained. (iii.) To leave all the unspent hay, artificial hay, straw, clover, fodder, turnips, or other root or green crop, muck, dung, and compost for the benefit of the lessor or the incoming tenant, who shall pay a reasonable price for the hay, artificial hay, straw, clover, turnips, root, or other green crop.

—to permit lessor or incoming tenant to enter to sow seeds;

—to deliver up at the end of the demise;

—to leave unspent hay and manure for the lessor.

Power of Re-entry.

IF and whenever any part of the several rents hereinbefore reserved shall be in arrear for twenty-one days, whether the same shall have been legally demanded or not, or if and whenever the lessee (*a*) shall be adjudi-

Proviso for re-entry.

(*a*) *I.e.*, the person for the time being holding the estate. See the interpretation clause, *infra*, and *Smith* v. *Gronow*, W. N. 1891, 123.

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OF A FARM FROM YEAR TO YEAR.

cated bankrupt, or make or enter into any composition or arrangement with or for the benefit of his creditors, or any execution shall be levied upon his goods or chattels or upon the premises, or if and whenever there shall be a breach of any of the agreements by the lessee herein contained, the lessor may re-enter upon any part of the said premises in the name of the whole, and thereupon the demise shall determine.

Agreements by the Lessor.

Agreements by lessor;

THE LESSOR agrees with the lessee in manner following:—(i.) To permit the lessee on his paying the several rents hereinbefore reserved or made payable, and performing and observing the several agreements by the lessee herein contained, peaceably to hold and enjoy the said premises during the demise without interruption by the lessor or any person claiming under him. (ii.) To pay all tithe rent-charge payable in respect of the said premises. (iii.) To provide within a reasonable distance from the said premises timber in the rough, bricks and lime and straw for thatching necessary for the repairs to be executed by the lessee. (iv.) To keep the walls, tiled roofs, and main timbers of the said messuage and of all buildings for the time being on the premises in good and substantial repair, the lessee giving to the lessor timely notice whenever such repair is required. (v.) To permit the lessee to have the use of the stockyard, barns, and granaries until the —— day of —— after the expiration of the demise for the purpose of stacking and thrashing his corn and grain. [*Here insert any other special stipulations relating to acts to be done, or payments to be made, by the lessor or incoming tenant at the expiration of the demise.*]

—for quiet enjoyment by the lessee;

—to pay tithe rent-charge;

—to provide timber in the rough for repairs;

—to keep walls, &c., in repair;

—to permit lessee to have the use of the stackyard after the end of the demise.

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OF A FARM FROM YEAR TO YEAR.

Compensation for Improvements.

Improvements (*a*).

FOR every or any improvement mentioned in the 3rd part of the 1st schedule to the Agricultural Holdings Act, 1908, the lessee shall receive at the expiration of the lease, and there shall accordingly be substituted in respect thereof for compensation under that Act, compensation according to the following scale. [*Here set out the scale.*]

Arbitration Clause.

Arbitration clause (*b*).

IF any difference shall arise between the lessor and lessee touching [*continue arbitration clause, supra,* p. 391, *inserting after* "operation hereof" *in lieu of the remainder of the clause, the words,* "or any price or compensation to be made or paid, or thing to be done hereunder, whether by virtue of the express stipulations hereof, or by virtue of the said Act or otherwise, the matter in difference shall be referred to arbitration pursuant to the provisions in that behalf of the said Act."]

Interpretation Clause.

Interpretation clause.

[*Supra,* p. 401.] AS WITNESS, &c.

Schedule.

THE SCHEDULE above referred to.

CVI.

PRECEDENT CVI.

BY TENANT FOR LIFE.

LEASE *of a* MESSUAGE *and* FACTORY *by a* TENANT *for* LIFE *under* THE SETTLED LAND ACT, 1882 (*c*).

Parties.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*tenant for life*], of the one part, and M., of, &c., and N.,

(*a*) See the Agricultural Holdings Act, 1908, s. 4. It is conceived that the clause will usually be dispensed with.

(*b*) See sect. 13 of the Act of 1908.

(*c*) Under this Act (Appendix VII., *infra,* see also n. (*b*) on pp. 160—162, *supra*), every tenant for life or other limited owner,

PRECEDENT CVI.

BY TENANT FOR LIFE.

of, &c. [*lessees*] (hereinafter called the lessees), of the other part, WITNESSETH, that the said A., in exercise of the power by the Settled Land Act, 1882, for this purpose given to him as the person who under an indenture of settlement dated the —— day of —, and expressed to be made between [*parties*], is beneficially entitled to possession of the lands expressed to be hereby demised for his life, and of every or any other power in anywise

Witnesseth.

or person entitled to exercise the powers given by the Act to a tenant for life, may (sect. 6, and see also sects. 10 and 17) lease or (sect. 19) join with co-owners in leasing (as the case may require) the settled land or any part thereof, or any easement, right, or privilege over or in relation to the same, for ordinary, or building, or mining purposes (see sect. 2 (10)), subject to certain regulations as to leases generally (sect. 7), and to certain special regulations as regards building and mining leases (see sects. 8 and 9 of the Settled Land Act, 1882, App. VII., *infra*, and sects. 8 and 9 of the Settled Land Act, 1890, App. XI., *infra*), such leasing power extending (sect. 12) to leases for giving effect to prior contracts or covenants for renewal, or for confirming void or voidable leases, and may also (sect. 13) accept surrenders and grant new leases, and (sect. 14) grant licences to copyholders to make leases. Fines may be taken (sect. 7 (2), see also sect. 4 of the amending Act of 1884, Appendix VIII., *infra*), but must be paid (sect. 22) either to the trustees of the settlement, or into Court in the same manner as purchase-money, and in the case of a mining lease, unless a contrary intention is expressed in the settlement, a portion of the rent must (sect. 11) be set aside as capital money, and dealt with accordingly. The clauses of the Settled Land Acts which relate to the principal mansion-house, and its demesne lands, power of completion, notice, entering into contracts, and dedicating parts of the settled land, and are more particularly referred to in the above-mentioned note, apply to leases as well as to sales. Care must be taken that the requirements as to notice (see sect. 45 of the Act of 1882, sect. 5 of the Act of 1884, and sect. 7 of the Act of 1890) are attended to, at any rate as regards leases which would not take effect under sect. 46 of the Settled Estates Act, 1877 (see n. (*a*) on p. 416, *supra*). In cases where the term does not exceed three years, a lease may now (see sect. 7 of the Act of 1890) be made under the Settled Land Acts by any writing under hand only, containing an agreement instead of a covenant by the lessee for payment of rent.

PRECEDENT CVI.

BY TENANT FOR LIFE.

enabling him, doth hereby demise and lease unto the lessees, ALL that parcel of land situate, &c., and also the messuage or dwelling-house, factory, boiler, and engine-house, and other buildings and erections now standing thereon, or on some part thereof, all which premises were lately in the occupation of X. Y., TO HOLD the premises unto the lessees for the term of fourteen years from the —— day of ——, 19—, YIELDING therefor (*a*) [*reservation of rent payable quarterly, ut supra*, p. 404]; AND THE lessees do hereby, for themselves and their assigns, and as separate covenants also each of them doth, for himself and his assigns, covenant with the said A. that the lessees will during the said term pay unto the person or persons for the time being entitled to the said premises in reversion immediately expectant on the determination of the said term (all of whom are hereinafter included in the expression the "reversioner or reversioners") the said rent on the days and in manner aforesaid, and will [*pay rates, &c., ut supra*, p. 397]; AND will keep the said messuage, factory, boiler, and engine-house, buildings, erections, and premises hereinbefore demised, and all other buildings and erections which shall at any time during the continuance of this demise be built or erected on the said parcel of land, in good condition and complete repair, and well and sufficiently painted, cleansed and maintained in every respect; AND all the said premises, together with all other buildings or erections at any time during the continuance of this demise built or erected as aforesaid, and all landlord's fixtures which now are, or at any time during the continuance of this demise shall be, in or upon the said premises, so well and sufficiently kept repaired, painted, cleansed and maintained as aforesaid, will, at the expiration or sooner determination of the said

Demise.

Parcels.

Habendum.

Reddendum.

Covenants by lessees;

—to pay the rent and taxes;

—and to keep in repair;

—and to deliver up at the end of the term.

(*a*) It is generally best, especially in leases granted under powers, not to express to whom the rent is payable. See *Whitlock's Case*, 8 Reports, 69, 71. And now, having regard to sect. 10 (1) of the Conv. Act, 1881 (App. IV., *infra*), any express reservation seems in result nugatory.

PRECEDENT CVI.

BY TENANT FOR LIFE.

term, peaceably surrender unto the reversioner or reversioners; AND will permit the reversioner or reversioners and his or their agents and workmen, twice in every year during the said term, to enter upon the said demised premises, or any buildings or erections to be built or erected thereon, to view the condition thereof; AND of all wants of repair then and there found, to give or leave notice in writing to the lessees to amend the same; AND will at their own expense within three calendar months from the giving or leaving of such notice, well and sufficiently amend the same accordingly; AND will at all times, during the said term, keep such of the said premises as are of an insurable nature, and all such other buildings or erections as aforesaid, insured against loss or damage by fire to the full value thereof in such office as the reversioner or reversioners shall approve of; AND will, when required by the reversioner or reversioners, produce the policy of such insurance, and the current year's receipt for the premium thereon; AND will expend all monies received in respect of such insurance in reinstating or repairing the premises destroyed or damaged by fire [*Proviso for re-entry, ut supra*, pp. 418, 419, *substituting* "lessees" for "lessee"]; AND he the said A., so far as relates to the acts of himself and of all persons claiming through or in trust for him, or under the said indenture of settlement, doth hereby covenant with the lessees, that the lessees, performing and observing all the covenants by the lessees herein contained, may hold the said premises hereby demised and all buildings or erections to be built or erected thereupon as aforesaid for the term aforesaid without any interruption by the reversioner or reversioners. PROVIDED ALWAYS, that unless such an interpretation is inconsistent with the context the expression the lessees hereinbefore used shall include their executors, administrators, and assigns. IN WITNESS, &c. (*a*).

And to permit the lessors to enter and view;

—and give notice of want of repair;

—and to repair on notice;

—and to insure,

—and produce the policy.

Proviso for re-entry.

Covenant by lessor for quiet enjoyment.

Interpretation clause.

(*a*) A counterpart of the lease must be executed by the lessees. See sect. 7 (4) of the Settled Land Act, 1882.

CVII.

LEASE *of a* PUBLIC-HOUSE. COVENANT *to* RENEW.

PRECEDENT CVII. OF A PUBLIC HOUSE.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*lessor*] (hereinafter called the lessor), of the one part, and B., of, &c. [*lessee*] (hereinafter called the lessee), of the other part, WITNESSETH, that, in consideration of £—— this day paid by the lessee to the lessor (the receipt whereof the lessor doth hereby acknowledge), THE LESSOR doth hereby demise unto the lessee ALL that messuage or public-house called ——, with the stables, yard, garden, and out-buildings thereunto belonging, situate in the parish of ——, in the county of ——, TO HOLD the premises unto the lessee for the term of —— years from the —— day of ——, 19—, YIELDING therefor, during the said term, the yearly rent of £——, clear of all deductions, by equal half-yearly payments on the —— day of ——, and the —— day of —— in every year, the first of such payments to be made on the —— day of ——, 19—, and the last to be made in advance on the —— day of —— next preceding the determination of the said term (*a*).

Parties. Witnesseth. Consideration. Receipt. Demise. Parcels. Habendum. Reddendum.

(*a*) See *supra*, p. 397, n. (*a*). Add, if desired:—

"And also by way of additional rent clear of all deductions such sum as the lessor shall in each year pay for the insurance of the licence or licences of the premises against forfeiture or refusal to renew, such last-mentioned rent to be paid on the half-yearly day for payment of the said yearly rent of £—— next ensuing after the insurance money shall have been paid."

But very frequently the amount required for insurance would be included in the yearly rent. If the addition is made, it should be borne in mind in the subsequent references to rent in the Precedent. Under the Licensing Act, 1904, s. 3 (4 Edw. 7, c. 23), a tenant paying a compensation fund charge is entitled to make a

PRECEDENT CVII.

OF A PUBLIC HOUSE.

Covenants by lessee to pay rent, &c.

To use the premises as a public-house only.

Not to carry on any other trade.

Not to do anything to forfeit the licence.

To obtain renewed licences.

Not to assign.

AND the lessee doth hereby for himself and his assigns covenant with the lessor, that he the lessee during the said term will [*remainder of covenants to pay rent and rates, &c., and keep in repair, ut supra*, pp. 397, 398, *and to permit the lessor to enter and view and to repair on three months' notice, ut supra*, p. 407; *and not to vitiate insurance*, p. 402]; AND also will during the said term, so long as the necessary licences can be obtained, use the said messuage or public-house hereby demised, as an inn, tavern, or public-house only (*a*); AND will not carry or suffer to be carried on upon any part of the said premises any trade or business other than the business of an inn-keeper or maltster; AND will not do or suffer to be done on the premises any act whereby the licences necessary for using the said messuage as an inn, tavern, or public-house, may be forfeited or the renewal thereof withheld (*b*); AND will at all proper times endeavour to procure a renewal of the necessary licences for using the same (*c*); AND will

deduction from his rent in respect of the payment at the rate specified in Schedule II., notwithstanding any agreement to the contrary.

(*a*) See *Grimsdick* v. *Sweetman*, [1909] 2 K. B. 740, where, although the licence had been refused under the Licensing Act, 1904, it was held that the lease was not determined, and that the lessee was liable for the rent.

(*b*) As to the terms and effect of such a covenant, see *Wooler* v. *Knott*, 1 Ex. D. 124, 265; *Fleetwood* v. *Hull*, 23 Q. B. D. 35, and cf. *Lacon* v. *Laceby*, W. N. 1897, 39; *Bryant* v. *William Hancock & Co., Ltd.*, [1899] A. C. 442; *Palethorpe* v. *Home Brewery Co., Ltd.*, [1906] 2 K. B. 5. It is thought that if the licence is to be insured, the lessor should reserve a higher rent, and insure in his own name. See *Lees* v. *Whiteley*, L. R. 2 Eq. 143.

(*c*) The following covenant, if appropriate, may be inserted at this point:—

To buy liquors of firm.

"AND will not during the said term buy, receive, sell or dispose of or permit to be bought, sold, or disposed of, in, on, or out of the premises, any porter, stout, beer or ale, not directly and *bonâ fide* purchased of the firm of

PRECEDENT CVII.

OF A PUBLIC HOUSE.

not, during the said term, assign, underlet, or part with the possession of the said premises, or any of them, without the previous consent of the lessor; AND ALSO will, &c. [*remainder of covenant to yield up the premises, ut supra*, p. 408, *omitting the words in brackets, and adding*, "and execute and do all such acts and things as shall be necessary or reasonably desired by the lessor for the purpose of transferring the trade and other licences, or procuring the same to be transferred to him, or as he shall direct"; *proviso for re-entry, and covenant by lessor for quiet enjoyment, ut supra*, pp. 399, 400]. AND ALSO that the lessor will, during the said term [*insure and produce policy and receipts, ut supra*, pp. 402, 403]; AND will apply all monies received by virtue of such insurance in reinstating or repairing the premises destroyed or damaged; AND ALSO that if the lessee shall desire to take a renewed lease of the said premises for the further term of —— years from the expiration of the term hereby granted, and of such desire shall, prior to the expiration of the said term, give to the lessor, or leave at his last known place of abode, six calendar months' previous notice in writing, and shall pay the rent reserved by, and perform the covenants by the lessee contained in, these presents up to the expiration of the term hereby granted, he the lessor will at the cost of the lessee, upon payment of £——, by way of premium, by deed, demise to him the said premises for the further term of —— years, at the same yearly rent, and subject

And to deliver up the premises and transfer licences.

Covenant by lessor to insure,

—and to produce policy,

—and to apply insurance monies in repairs.

And to renew.

——, Brewers and Maltsters in ——, aforesaid, or their successors in business if able and willing to supply the same of good quality and at the fair current market price." See *Clegg* v. *Hands*, 44 Ch. D. 503; *White* v. *Southend Hotel Co.*, [1897] 1 Ch. 767; *Birmingham Breweries Co.* v. *Jameson*, W. N. 1898, 15; on appeal, *ib.* 145; *John Brothers, &c. Co.* v. *Holmes*, [1900] 1 Ch. 188; *Courage & Co., Ltd.* v. *Carpenter*, [1910] 1 Ch. 262.

PRECEDENT CVII.

OF A PUBLIC HOUSE.

to the same covenants and provisoes as are herein contained, except this present covenant (*a*). [*Interpretation clause, supra*, p. 401.] IN WITNESS, &c.

CVIII.

PRECEDENT CVIII.

BUILDING LEASE UNDER POWER.

BUILDING LEASE *under a* POWER *in a* MARRIAGE SETTLEMENT.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*donee of the power*], of the one part, and B., of, &c. [*lessee*] (hereinafter called the lessee), of the other part, WITNESSETH, that HE the said A., in exercise of a power for this purpose to him limited by an indenture, dated the —— day of ——, and expressed to be made between [*parties*], and of every statutory or other power enabling him in this behalf, DOTH by this deed appoint by way of demise (*b*) and lease unto the lessee, ALL THAT parcel of land situate in the parish of ——, in the county of ——, containing in the whole about —— acres —— roods, and delineated and described as to the abuttals and linear dimensions thereof on the plan thereof drawn in the margin hereof, and thereon coloured —— (*c*). TO HOLD the premises unto the lessee, for the term of —— years from the —— day of ——, 19—, YIELDING therefor during the said

Parties.

Witnesseth.

Parcels.

Reddendum of certain yearly rents.

(*a*) As to what breach of covenant by the lessee will disentitle him to a renewed lease, see *Job* v. *Bannister*, 2 Kay & J. 374; *Finch* v. *Underwood*, 2 Ch. D. 310; *Bastin* v. *Bidwell*, 18 Ch. D. 238; and cp. *Starkey* v. *Barton*, [1909] 1 Ch. 284; and as to the construction of such covenants generally with reference to conditions precedent to renewal, *Nicholson* v. *Smith*, 22 Ch. D. 640.

(*b*) The words of the power should be adhered to. As to the powers of leasing given to tenants for life by the Settled Land Acts, see *supra*, p. 427, and also p. 411, nn.

(*c*) Where the land is registered, see the parcels, p. 149, *supra*, and the observations, *supra*, pp. 104, 105.

PRECEDENT CVIII.

BUILDING LEASE UNDER POWER.

term the yearly rents following clear of all deductions, that is to say, for the first three years of the said term the rent of £——, and for the fourth and every subsequent year of the said term the rent of £——, the said rents to be paid by equal half-yearly payments on the 24th day of June, and the 25th day of December in every year, the first half-yearly payment of the said rent of £—— to be paid on the —— day of ——, 19—, and the first half-yearly payment of the said rent of £—— to be paid on the —— day of ——, 19— [and the last payment thereof to be made in advance three calendar months before the expiration of the said term] (*a*). AND THE LESSEE doth hereby for himself and his assigns covenant with the said A., that he the lessee, will during the said term pay the said rents at the times and in manner aforesaid; AND will pay all existing and future taxes, rates, assessments and outgoings for the time being payable in respect of the premises (*b*): AND WILL at his own expense within three years from the said —— day of ——, 19—, erect upon the said parcel of land, and according to plans and elevations to be first approved of by the said A. or other the person or persons for the time being entitled to the said parcel of land in reversion immediately expectant on the term hereby granted (all of whom are hereinafter included in the expression "the reversioner or reversioners"), or his or their agent, twelve, and not more than twelve, good and substantial dwelling-houses, with proper and sufficient out-buildings and conveniences thereto; AND WILL expend in the erection of each house £—— at the least; AND WILL construct, complete, and finish all the said houses, erections, and buildings throughout, of good, sound bricks, mortar, timber, and slates, in a good and workmanlike manner; AND ALSO will at the like expense, during the said term, well and substantially maintain and

Covenants by lessee, to pay rent and taxes,

—and to erect houses according to plans to be approved by the reversioner.

And to expend in such building a certain sum.

And to build in a workmanlike manner.

To repair.

(*a*) See *supra*, p. 397, n. (*a*).

(*b*) See *supra*, p. 393, n. (*b*).

PRECEDENT CVIII.

BUILDING LEASE UNDER POWER.

keep in good condition and complete repair the said dwelling-houses and all other buildings which shall be built upon the said parcel of land; AND at the like expense keep in good order all sinks, privies, and drains belonging to or draining the same. [*Covenants to permit reversioner or reversioners to enter, &c., and to repair on notice, ut supra*, pp. 414, 407.] AND ALSO will within three calendar months after any of the said dwelling-houses to be erected upon the premises as aforesaid shall have been roofed in and thenceforward during the same term at the like expense, insure and keep insured the same against loss or damage by fire in such office as the reversioner or reversioners shall approve, in a sum equal to two-thirds of the full value thereof; AND WILL [*produce policies and apply insurance monies, ut supra*, p. 398]; AND ALSO will not, at any time during the said term, carry on or permit to be carried on upon the said parcel of land, or in any dwelling-house or building to be erected thereon, any noisome or offensive trade or business (*a*); AND ALSO will, at the expiration or sooner determination of the said term, deliver to the reversioner or reversioners, the said premises with all dwelling-houses and buildings to be erected thereon, and all additions and fixtures thereto, in such condition and repair as aforesaid, and in all respects in such state and condition as shall be consistent with a due performance of the covenants hereinbefore contained. [*Proviso for re-entry, ut supra*, p. 399. *Covenant by the lessor for quiet enjoyment, ut supra*, p. 400, *adding at end*, "or under the said indenture of settlement" (*b*). *Interpretation clause, supra*, p. 430.] IN WITNESS, &c.

And to cleanse drains, &c.

To insure.

And to produce policies of insurance.

Not to carry on offensive trades.

To deliver up at the end of the term.

(*a*) See nn. (*c*) (*d*), p. 399, *supra*.

(*b*) The lessee, if so required by the power, must execute a counterpart of this lease.

CIX.

LEASE *to* BUILDERS *of* HOUSES *erected by* THEM *upon* LAND *within the limits of the* METROPOLITAN BUILDING ACTS (*a*).

PRECEDENT CIX.

LEASE TO BUILDERS.

THIS INDENTURE, made the —— day of ——, 19—, BETWEEN A., of, &c., and B., of, &c. (hereinafter called the lessors), of the one part, and C., of, &c., and D., of, &c. (hereinafter called the lessees), of the other part, WITNESSETH, that in consideration of the monies which have been expended by the lessees in the construction of the dwelling-houses and hereditaments hereinafter demised, and in consideration of the rent hereinafter reserved, and of the covenants by the lessees hereinafter contained, the lessors do hereby demise unto the lessees, ALL THAT parcel of land situate on the —— side of a new street called —— Street, in the parish of ——, in the county of ——, as the same is delineated on the plan drawn in the margin of these presents, and thereon coloured ——, and all those —— newly erected dwelling-houses now standing on part of the said parcel of land and distinguished on the said plan by the colour ——: AND ALSO all that other parcel of ground delineated on the same plan and thereon coloured , and being one equal moiety of the said street (*b*), TOGETHER WITH full right of passage for all persons, carriages, and animals, to and from the said first-mentioned parcel of land and dwelling-houses over the other moiety of the said street, and over all neighbouring (*c*) streets belonging in pos-

Parties.

Testatum.

Parcels.

Together with right of way over street,

(*a*) This Precedent is inserted as the form to be embodied in the third schedule to the agreement, Precedent No. XCVI., *supra*, p. 384.

(*b*) See note (*c*), p. 434, *supra*.

(*c*) Cf. *Re Baroness Bateman and Parker's Contract*, [1899] 1 Ch. 599; *Mayor, &c. of Wellington and Mayor, &c. of Lower Hutt*, [1904] A. C. 773.

PRECEDENT CIX.

LEASE TO BUILDERS.

session or reversion to the lessors: AND TOGETHER WITH full right of passage and running of water and soil from the said first-mentioned parcel of land and dwelling-houses through the sewer which runs under the said street, one equal moiety whereof is hereinbefore demised: EXCEPT NEVERTHELESS AND RESERVING full right of passage over the said moiety hereinbefore demised of the said street, for the lessors and for all other persons and all carriages and animals to and from all neighbouring lands and houses belonging in possession or reversion to the lessors: AND ALSO full right of passage and running of water and soil from all such neighbouring land and houses as aforesaid, through the sewer aforesaid, and through all other sewers and all drains and channels in or under the said parcels of land hereinbefore demised, or either of them (*a*): TO HOLD the premises UNTO the lessees, for the term of —— years, from the —— day of ——, 19—: YIELDING therefor during the said term the yearly rent of £——, clear of all deductions, by equal quarterly payments on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December in every year, the first of such payments to be made on the —— day of ——, 19—, and the last quarterly payment [*supra*, p. 404]: AND THE lessees do hereby, for themselves and their assigns, and as a separate covenant each of them doth hereby for himself and his assigns, covenant with the lessors, THAT the lessees will during the said term pay the rent hereinbefore reserved on the days and in manner aforesaid: AND ALSO will during the said term [*pay rates and taxes, supra*, p. 397]: AND ALSO will complete all the said dwelling-houses hereinbefore demised, with yards, gardens, forecourts, offices, outbuildings, sewers, and drains, to the same respectively, so that the same shall be fit for habitation and use, to the satisfac-

—and right of passage of water, &c.; —excepting right of way over street;

—and right of passage of water, &c.

Habendum.

Reddendum of certain rent.

Covenants by the lessees;

—to pay rent;

—and taxes;

—to complete dwelling-houses;

(*a*) See *Chadwick* v. *Marsden*, L. R. 2 Ex. 285; *Wood* v. *Saunders*, L. R. 10 Ch. 582.

tion of the surveyor for the time being of the lessors, within twelve calendar months from the date hereof: AND will during the said term keep all the said premises (including the said moiety hereinbefore demised of the said street, and the corresponding moiety of the sewer under the same) in good condition and complete repair: AND in particular paint the external wood and iron-work thereof in every fourth year of the said term, and the inside wood and iron-work in every seventh year of the said term, and both external and internal work once during the last three years of the said term: AND will permit the lessors, and their agents, surveyors, and workmen [*to enter to view the premises, and that the lessees will repair upon notice, inserting the plural instead of the singular number both with reference to the lessors and lessees, supra*, p. 407]: AND will during the said term keep the said dwelling-houses and all other buildings and landlord's fixtures which may at any time be erected or placed on or about the said first-mentioned parcel of land insured against loss or damage by fire in the sum of £—— at least, by a policy or policies to be effected in such office in the city of London or Westminster, as the lessors shall from time to time approve: AND WILL whenever required produce the policy or policies of such insurance, and the current year's receipt for the premium thereon, to the lessors, or their agent: AND will apply all monies received in respect of such insurance in reinstating or repairing the premises destroyed or damaged by fire: AND will not carry on or permit to be carried on upon the said premises or any part thereof any manufacture of an obnoxious character, or any noisy, noisome, offensive, or dangerous trade, business, or occupation, or any nuisance, but will use the same only as private dwelling-houses or shops, or for carrying on handicraft occupations of a quiet, innoxious, and inoffensive nature (*a*): AND will not, without the

—to repair;

—to paint;

—to permit the lessors to enter to view the premises and to repair on notice;

—to insure;

—and produce policies and receipts;

—not to carry on offensive trades;

—will not make alterations;

(*a*) See n. (*d*), p. 399, *supra*.

PRECEDENT CIX.

LEASE TO BUILDERS.

licence in writing of the lessors, make any alteration in or addition to any of the said dwelling-houses, or in or to the elevations thereof respectively, or the offices or outbuildings thereto respectively belonging: AND ALSO will not darken, injure, or obstruct any window or light in or belonging to the said premises or any adjoining buildings of the lessors, and will not permit any new window or light to be opened or any act or thing to be done which shall or may constitute an encroachment upon or interference with the said premises, or tend to subject the said premises or any part thereof to any easement or servitude: AND in case any such new window or light shall be opened or any such act or thing shall be done or attempted to be done will forthwith give notice thereof to the lessors and at the request and cost of the lessors will do all such things as may be reasonably required by them for protecting the said premises against such encroachment or interference and for preventing the acquisition of such easement or servitude: AND will not assign [underlet, or part with the possession of] the said premises or any part thereof without the licence in writing of the lessors: AND will at the expiration or sooner determination of the said term deliver up to the lessors the said premises and all fixtures which may at any time during the last —— years of the said term be in or about the same, in such good condition and complete repair as aforesaid, and in such state and condition as shall be consistent with the due performance of the several covenants hereinbefore contained: PROVIDED ALWAYS that if the said street a moiety whereof is hereinbefore expressed to be hereby demised, and the sewer under the same, shall wholly or partially be adopted by the local authority as a public road and sewer, then and thenceforth the obligation under the covenant in that behalf hereinbefore contained to keep the same in repair shall cease wholly, or to the extent to which the same shall be adopted by the local authority as aforesaid: PROVIDED ALWAYS that if and

—not to assign without licence;

—and to deliver up the premises at the end of the term.

Proviso that covenant to repair road and sewer shall cease, on adoption by the parish.

PRECEDENT CIX.

LEASE TO BUILDERS.

whenever any part of the said rent shall be in arrear for twenty-one days, whether the same shall have been legally demanded or not, or there shall be a breach of any of the covenants by the lessees hereinbefore contained (except in the case mentioned in the proviso lastly hereinbefore contained), the lessors may re-enter upon the said premises, and thereupon the said term of —— years shall absolutely determine: AND THE lessors do hereby covenant with the lessees that the lessees, paying the said rent and performing and observing all the covenants hereinbefore contained, may peaceably hold and enjoy the said premises during the said term without any interruption by the lessors, or any person claiming under them. [*Interpretation clause, supra*, p. 401, *using the plural number as to both lessors and lessees.*] IN WITNESS, &c.

Proviso for re-entry.

Covenant by the lessors for quiet enjoyment.

CX.

PRECEDENT CX.

MINING LEASE.

MINING LEASE.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*lessor*] (hereinafter called the lessor), of the one part, and B., of, &c. [*lessee*] (hereinafter called the lessee), of the other part, WITNESSETH, that the lessor doth hereby demise unto the lessee, ALL metallic mines and minerals, open and hidden, which belong to the lessor, in the parish of ——, in the county of —— (*a*), within the limits following [*description of limits*], within which limits a certain mine called —— is now in course of being [*or* "has been"] worked, AND ALL liberties which the lessor has power to grant, of searching for, getting, making

Parties.

Witnesseth.

Demise.

Parcels.

(*a*) As to mines and tin streaming works within the Stannaries, see the Stannaries Acts, 1869 and 1887; the Stannaries Court Abolition Act, 1896; and the Companies (Consolidation) Act, 1908.

PRECEDENT CX.

MINING LEASE.

merchantable, and removing the said metallic mines and minerals, EXCEPT and reserved unto the lessor, all mines and ores of ——, and unrestricted liberty for him and his agents, servants, and workmen, to search for, get, make merchantable, and remove all mines and ores of ——, and all clay, stone, earth, and minerals, not hereby demised, and to communicate from and to any adit or working within the limits aforesaid, to or from any adit or working beyond the same limits, and to examine and take plans of all workings under this demise; and in such searching for, communicating, examining, and taking plans, to use the adits, shafts, machinery, and tackle in or about the mines hereby demised, making reasonable compensation for such use of the said machinery and tackle, except in examining and taking plans: TO HOLD the premises hereby demised unto the lessee, henceforth for the term of —— years; YIELDING therefor a money-rent equal to one-fifteenth of the monies for which the materials sold shall be sold, except the minerals a share whereof shall have been previously rendered, AND YIELDING so often and to such extent as shall be required by notice (the same to be determinable by notice), as a mineral rent, one-fifteenth of all materials which for the time being shall have been gotten and not sold, the said materials to be made merchantable before sale or render of a share thereof; the said money and mineral rents to be clear of all present and future taxes, rates, and assessments, and all other charges and deductions whatsoever, and to be paid or delivered as hereinafter mentioned. AND THE lessee doth hereby for himself and his assigns covenant with the lessor, that the lessee will work the said mines upon the cost-book and not the scrip system, and will, without delay, make merchantable all minerals gotten; AND within reasonable periods during the said term, sell on the said lands, the mines and minerals under which are hereinbefore demised, by private ticketings, and not elsewhere or otherwise (unless with consent) all the

Exception.

Habendum.

Reddendum.

Covenant by lessee.

To work the mine.

To sell the minerals to be sold.

said minerals, except those in respect whereof a mineral rent shall previously have been rendered; AND WILL GIVE ten days' notice of the day, hour, and place of every such sale, and of the minerals to be offered for sale; AND WILL, within ten days after every such sale, give a return of the minerals sold thereat, with their prices and purchasers; AND WILL immediately after every such sale, and before the removal of the minerals sold, pay the money-rent thereby ascertained; AND WILL, without intermission, lay out on the surface of the aforesaid lands all minerals in respect whereof a mineral-rent shall be the required render, and divide the same into fifteen shares of equal value, AND give ten days' notice of the day, hour, and place of every division, and immediately after every division, render the mineral-rent thereby ascertained; AND WILL pay all present and future taxes, rates, and assessments, and all other charges and deductions whatsoever, upon or in respect of the said premises hereby demised, or the aforesaid minerals or sale-monies, or the aforesaid money or mineral-rents, or any part thereof respectively; AND WILL during the said term, with no less than —— able-bodied miners, in the best and most approved manner, and without intermission, except while prevented by inevitable accident or repairs, try the lands, the mines and minerals under which are hereby demised, and effectually drain and work the mines hereby demised, and for the time being open or found, and make, erect, and maintain, all shafts, adits, buildings, engines, machinery, and apparatus, necessary for those purposes; AND WILL NOT, unless with consent, drive any adit within — — fathoms of the extremity of any of the said lands; AND WILL substantially sustain and maintain all the workings of the said mines, and all engines, machinery, apparatus, buildings, and fixtures, in a proper course of working and repair, and, at the end or other determination of the said term, deliver up the said mines, workings, and buildings, in good condition and perfect working

And pay the money-rent.

And to make equal division of the minerals to be divided.

To pay taxes, &c.

To employ not less than —— miners.

To maintain workings.

PRECEDENT CX.

MINING LEASE.

order, unto the lessor, his heirs or assigns; AND, at the end of the said term, if required by notice one calendar month or upwards previously thereto, or upon the sooner determination of the said term, if required by notice, deliver up the said engines, machinery, and apparatus, and all fixtures belonging to the lessee, or the parts thereof specified in such notice, to the lessor, at a valuation to be agreed on, or to be determined by two arbitrators, or their umpire, in the usual way; AND WILL during the said time keep proper books of account of the workings of the said mines, and of the disposal of the minerals obtained, and will keep the said books and the cost-book or cost-books, and any plans which may be made of the workings of the said mines, on the lands aforesaid, and will give copies of and extracts from the same books and plans as shall be required, AND WILL also permit the said books and plans to be inspected and copied by the person or persons named in that behalf in any notice; AND WILL make good or make compensation for, all damage done by him the lessee, which the lessor or the lessee is, or may be compellable to make good, or make compensation for, and will indemnify the lessor therefrom, and from all expenses in relation thereto; AND WILL NOT assign, or underlet, the said premises hereby demised, or any part thereof without consent. AND IT IS HEREBY DECLARED, that every notice and consent hereinbefore mentioned, means, except where otherwise hereinbefore expressed, notice or consent on behalf of the lessor, in writing, to be given and signed by him, or some person authorized by him, and, in case of notice, either actually delivered to the lessee, or put up within the limits aforesaid; AND every such notice shall be notice to the lessee; AND every notice, return, copy, extract, and plan, hereinbefore covenanted to be given by the lessee, shall be made and given at his own expense, and be signed by him or the captain of the said mines, and shall be given to the lessor, or some person authorized by him to

To deliver up machinery at a valuation.

To keep accounts.

To make compensation for damage.

Not to assign.

Declaration as to notice and consents.

receive the same: PROVIDED ALWAYS, that, on failure by the lessee to perform or observe any of the covenants hereinbefore contained, the lessor may stop, seize, and distrain all minerals, engines, machinery, apparatus, fixtures, goods, chattels, and effects, in and about the mines hereby demised, or within the limits aforesaid, and every distress there made take away and retain to his use; AND, if any money-rent shall be due, may sell the said distress, as in common cases of distress for rent, and, out of the monies arising thereby, retain such money-rent, and any further money-rent which may become due, and the costs of making, keeping, and selling such distresses; and on every such failure as aforesaid, or if the said premises hereby demised shall be assigned or assignable by means of the bankruptcy of the lessee, the lessor may re-enter and enjoy the premises hereby demised, and thereupon the said term of years shall absolutely determine; but until any such failure, or until the said premises shall be assigned or assignable as aforesaid, the lessee may enjoy the said premises without eviction, or (except as hereinbefore excepted and reserved) interruption by the lessor. AND IT IS HEREBY AGREED, that if the lessee shall, during the said term, perform and observe all the covenants and conditions hereinbefore contained and shall, not less than - calendar months before the end of the said term, deliver to the lessor an agreement in writing by three responsible persons to join as co-lessees, and such persons shall be approved of by the lessor, then and in such case the lessee, together with such intended co-lessees, shall be entitled to a lease from the lessor of the said premises hereby demised, for any term not exceeding —— years from the date of these presents, at the rents hereinbefore reserved, and under and subject to such covenants, conditions, and agreements, as to the lessor shall seem reasonable, but so that the persons to whom such further lease shall be granted shall pay all costs of such lease, and also (if required) of a survey or plan upon such

PRECEDENT CX.

MINING LEASE.

Powers of distress and entry.

Agreement for granting a future lease.

PRECEDENT CX. MINING LEASE.

scale as the lessor shall require of the said premises to be demised (*a*). [*Interpretation clause, supra*, p. 401.] IN WITNESS, &c.

CXI.

PRECEDENT CXI. OF A COLLIERY.

LEASE *of a* COLLIERY *and* SEAM *of* COAL.

THIS INDENTURE, made the —— day of ——, 19 -, BETWEEN A., of, &c. (hereinafter called the lessor), of the one part, and B., of, &c., and C., of, &c. (hereinafter called the lessees), of the other part, WITNESSETH that, in consideration of £—— upon the execution of these presents paid by the lessees to the lessor (the receipt whereof the lessor doth hereby acknowledge), and of the rents and royalties hereinafter reserved, and of the covenants by the lessees hereinafter contained, He the lessor doth hereby demise and grant unto the lessees, ALL THAT colliery known as the —— Colliery, situate at ——, in the county of ——, with the manager's house and garden and the miners' cottages now occupied therewith, and the engine-house, workshops, offices, pits, fixtures, fixed machinery, pit-bank, railway-siding, canal-basin, easements and appurtenances belonging thereto: AND ALSO ALL that mine or seam of coal called the —— Coal now remaining ungotten, within and under all those closes, parcels of lands, roads, messuages, tenements, and hereditaments, containing altogether an area of —— acres or thereabouts, situate in the parish of —— in the said county of ——, and delineated on the plan drawn on the back of the —— skin of these presents whereon the boundaries are defined by an external border coloured

Parties.

Witnesseth.

Demise.

Parcels.

Colliery, &c.;

—and mine of coal under specified area of land;

(*a*) This clause was framed for insertion in leases granted for short terms for the purpose of searching for minerals; it is, of course, not a necessary part of the Precedent in the text.

red: TOGETHER WITH LIBERTY for the lessees, without entering upon the surface of any other of the said lands except the parcels of land containing —— or thereabouts lying on the south side of the —— Railway, and coloured *yellow* on the said plan, and without entering upon or disturbing any existing or future building on the said parcels of land coloured *yellow*, to work, get, carry away, and dispose of the said mine, or seam of coal hereby demised (hereinafter referred to as the demised mine), and also any adjacent or other coal or ironstone of which they are or may become the owners or lessees, and whether now belonging to the lessor or to any other person: AND for the purposes aforesaid upon the surface of any of the said parcels of land coloured *yellow*, to sink, erect, make, maintain, and use any pits, engine-houses, buildings, coke-ovens, iron-furnaces, iron-works, brick-kilns, roads, railways, reservoirs, watercourses, basins, wharves, engines, and machinery, and to deposit, bank, make into coke, burn, smelt, convert, and manufacture the produce of the demised mine, or any other coal or any ironstone, and to dig and get brick-earth and sand, and to make and burn the same into bricks to be used in and about the said colliery and mine, but not elsewhere, and to construct, make, maintain, and do all other works and things which may be necessary or convenient: AND below the surface of all the said lands included within the said *red* border (whether coloured *yellow* or not), to make, maintain, and use any necessary or convenient underground works whatsoever: EXCEPT AND RESERVING nevertheless unto the lessor sufficient pillars and bulwarks of coal at the bottom of and round the walls of each of the existing pits and of any new pit which may be sunk to the demised mine, and so much (if any) of the rest of the coal therein as he shall remove in sinking to, working or getting any of the other mines, or shall desire to retain as a support for any pit he may sink to any such other mine: AND ALSO the right of sinking to, working, getting and carry-

PRECEDENT CXI.

OF A COLLIERY.

—with liberty to work the same without entering upon the surface except of certain part;

—and to erect engines, &c.;

—and to carry on underground works.

Exception of coal for support of pits;

—and of so much as lessor may get in sinking to other mines.

Reservation of right of

PRECEDENT CXI.

OF A COLLIERY.

working other mines.

ing away all or any of the mines, minerals and substances in or under the said lands other than the demised mine, and for those purposes to sink, make, erect, and use all such pits, buildings, engines, machinery, roads, works, and conveniences upon, through, or under all or any of the same lands, and over, under, or across any of the roads, ways, levels, and workings of the lessees or their assigns as shall be necessary or expedient, so that such roads, ways, levels, and workings be not unnecessarily injured: To HOLD the premises unto the lessees, but subject to the rights (if any) of the —— Railway Company, and of the —— Canal Company in so much of the said coal as is under or required for the support of the said railway and canal respectively, for the term of —— years, from the —— day of ——, 19—: YIELDING therefor during the said term on the —— day of —— in each year, the rents and royalties hereinafter specified (that is to say), IN respect of the demised mine, a footage rent after the rate of £ —— for every acre in extent being one foot in thickness (and so on in proportion for every less quantity than an acre and for any greater or less thickness than one foot), of coal gotten during the preceding six calendar months: AND IN CASE the lessees shall not in any half-year get such a quantity of the said coal as according to the said footage rent will produce a clear half-yearly minimum rent of £——, then such a sum as, together with the footage rent payable for the coal actually gotten during the preceding half-year, will amount to the said minimum rent of £——: AND, in respect of the right of outstroke from other mines, a royalty after the rate of —— per ton of twenty hundredweight, for all the coal, minerals, and substances brought to surface during the preceding six calendar months: AND in respect of the liberties hereinbefore granted relative to the surface of the said parcels of land coloured *yellow*, a half-yearly rent after the rate of £—— for every statute acre (and so in proportion for any less quantity),

Habendum.

Reddendum;

—of footage rent;

—and of minimum half-yearly mine-rent;

—and of outstroke royalty;

—and of surface rent.

now or at any time occupied, such last-mentioned rent to continue payable until the rent-day next after the land in respect whereof the same shall be payable shall have been cleared, even if such land shall not be cleared until after the expiration or sooner determination of the said term: THE SAID several rents and royalties to be paid clear of all deductions: AND IT IS HEREBY AGREED that, for the purpose of ascertaining the amount of mine-rent payable from time to time under the reservation of rents hereinbefore contained, coal which shall be found unworkable or unsaleable shall not be taken in account, and the measurements shall be made underground, and the acreage or superficial measure, and the thickness of the coal, shall be taken and measured at right angles to one another so as to ascertain the true cubical contents of the mine gotten: PROVIDED ALWAYS, and it is hereby agreed that, if in any half-year the lessees shall not actually get from the demised mine, such a quantity of coal as, according to the footage rent hereinbefore reserved, would have produced a half-yearly rent of £——, and shall in any subsequent half-year or half-years get therefrom such a quantity of coal as at the footage rent aforesaid would produce a half-yearly rent exceeding £—— they shall not be liable to pay any rent for so much of the surplus coal gotten as at the footage rent aforesaid would make up the deficiency (*a*): PROVIDED ALWAYS

Provision for ascertaining the rent by underground measurement.

Average clause.

Power of distress.

(*a*) The following somewhat different mode of framing the reddendum and average clause (taken from a lease of a brickfield) is slightly more convenient where a royalty per ton gotten or gotten and removed instead of a footage rent is reserved :—

"YIELDING therefor during the said term the certain yearly rent of £—— for — bricks, whether such number of bricks shall be yearly manufactured on the said premises or not, during each year of the said term, such rent of £—— to be payable by two equal half-yearly payments in each year on the —— day of —— and the ——

Reddendum of certain rent for —— bricks;

PRECEDENT CXI.

OF A COLLIERY.

and it is hereby agreed that, if any part of the rents or royalties hereby reserved, shall be in arrear for twenty-one days, whether the same shall have been legally demanded or not, the lessor may enter, seize, and distrain and sell and dispose of, in the same manner as landlords may for rent in arrear, the coal, engines, machinery, railways, plant, cattle, implements, utensils, gear, and chattels, or any part thereof respectively belonging to the lessees within or upon any part of the said premises or any mine or mines for the time being worked in connection therewith lying within or under any adjoining or neighbouring lands, and out of the monies arising from the sale of any such distress or distresses may satisfy all such arrears then due, together with the expenses of or incident to any such distress or sale, ren-

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day of ——, and the first payment thereof to be made on the —— day of —, 19—: AND YIELDING over and above the said certain yearly rent, the further rent or royalty of —*s.* for every thousand bricks manufactured on the said premises over and above the said quantity of ——; the said further rent or royalty to be payable on such of the said half-yearly days hereinbefore mentioned as shall happen in any year next after the said bricks shall have been burnt ready for delivery: PROVIDED ALWAYS, and it is hereby agreed, that if in any year or years of the said term the lessee shall not actually manufacture from and out of the said premises the full quantity of —— bricks, he may, in any one or more of the [next] succeeding [three] years in which more than that quantity of bricks shall be manufactured, manufacture from and out of the said premises without paying any further rent or royalty for the same, enough bricks to make up the deficiency."

—and of royalty of —*s.* per 1,000 bricks above ——.

Average clause.

It should be here observed that the lease contained a covenant by the lessee to make only bricks of the common sizes.

dering the overplus (if any) unto the lessees (*a*): AND THE LESSEES do hereby, for themselves and their assigns, covenant with the lessor, THAT the lessees will during the said term pay to the lessor the several rents and royalties hereinbefore reserved on the days and in the manner hereinbefore appointed for the payment thereof, clear of all deductions: AND pay all existing and future taxes, rates, assessments, and outgoings of every description for the time being payable either by landlord or tenant, in respect of or charged upon the premises, or of or upon the rents hereby reserved, or any land, erection, or work entered upon, erected, or made under or by virtue of these presents: AND will, before the —— day of ——, 19— [*six calendar months from the commencement of the term*], and afterwards half-yearly before every subsequent —— day of —— and —— of —— [*the rent days*], during the said term, get such a quantity at least of the said coal as according to the footage rent hereinbefore reserved will produce a clear half-yearly rent of £—— [*the minimum rent*]: AND will, during the said term, keep the iron tubing with which a portion of each of the two existing pits is cased in the present position thereof, and in thorough repair and watertight, and will not suffer water to flow into the workings: AND will, during the said term vigorously, and without any voluntary intermission, and fairly, and in a regular, workmanlike manner, and according to the most approved principles, work the demised mine, and get and raise the coal fully and clearly before them (*b*): AND will, during the said term, and at the expiration or sooner determination

Covenants by the lessees;
—to pay rents;
—and taxes:
—to get enough coal to produce the minimum half-yearly rent;
—to keep the iron tubing in pits in repair;
—to work the mine without interruption;
—to leave pillars at bottom of each pit;

(*a*) It would seem that this power (being part of a mining lease) is valid under sect. 6 of the Bills of Sale Act, 1878, without registration. See *Re Roundwood Colliery Company*, [1897] 1 Ch. 373.

(*b*) As to this covenant, see *Charlesworth* v. *Watson*, [1906] A. C. 14, where, owing to difficulties in working, it had become impossible to work the coal without heavy loss and the undertaking had consequently been abandoned.

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thereof, leave sufficient pillars and bulwarks of coal at the bottom of and round the walls of each of the existing pits, and of any new pit: AND will use only for colliery purposes, or in building on the said lands coloured *yellow*, all bricks made under the liberties hereinbefore granted, and will not sell or remove any brick-earth or sand dug from the same lands or any bricks made therefrom: AND will during the said term keep in good repair and condition the private or occupation road on the lands of the lessor leading to the said colliery from the road leading from —— to ——: AND effectively fence off such parts of the said lands coloured *yellow* as are or shall be used for any of the purposes of these presents from the adjoining lands, and hang sufficient gates in the fences for the convenient passing and repassing of the owners or occupiers of the said adjoining lands, who and whose servants and workmen shall always be at liberty, whether on foot or on horseback and with or without horses, cattle, carts, and carriages, to pass and repass through such gates, and over and across all ways or roads, doing thereby as little damage as may be: AND will, during the said term, keep the said fences and gates in such repair as aforesaid: AND will make reasonable compensation to every tenant and occupier of any of the said lands which may be taken or used for colliery or other purposes by the lessees for all loss or damage he may sustain thereby: AND will indemnify the lessor against all liability for loss or damage done by the lessees to or on any lands of the lessor: AND will during the said term at the like expense keep and uphold the said manager's house, miners' cottages, engine-house, workshops, offices, buildings, pits, pit-bank, railway-siding, canal-basin, fixed machinery, and fixtures hereinbefore demised, and all additions thereto respectively (hereinafter collectively referred to as the demised plant and additions thereto), and all new buildings, pits, railways, roads, reservoirs, works, fixed machinery and fixtures, which shall during the said term

—to use bricks for colliery purposes only;

—to repair occupation road;

—to fence off lands used for colliery purposes;

—to make compensation to tenants of surface-lands;

—and indemnify the lessor;

—to repair engines, &c.;

be erected or placed on the said lands coloured *yellow* (hereinafter collectively referred to as new works), in good and substantial repair and working order: AND will on the —— day of ——, 19—, and afterwards on every subsequent half-yearly rent-day, or within twelve days afterwards, make and deliver to the lessor, or his agent, a just account in writing, signed by the lessees, of the quantity, thickness, and cubical contents of the coal gotten from the demised mine in the preceding half-year, AND of the weight of the coal, minerals, and other substances brought to surface, by means of the existing pits, or any new pit on the said lands included in the said plan, from any other land, with all proper details, and also a correct plan and admeasurement drawn upon a scale of not less than —— inches to an acre, and similarly signed, of the surface of the land under which the demised mine shall have been gotten: the said accounts, plans, and admeasurements respectively to be binding upon the lessees, unless some manifest error shall appear therein and shall be notified by them in writing to the lessor within six calendar months after the delivery thereof: AND will permit the lessor and his agents and other persons employed by him at all times during the said term to enter upon the said lands coloured *yellow*, and into any buildings or works thereon, and examine the state and condition thereof, and descend and pass into and through, and ascend from the demised mine, and to view the state and condition of the said mine, and of the workings thereof, and make admeasurements and diallings, and for any such purpose to have the assistance of the colliers and workmen, and at all reasonable times during the said term to inspect and take copies of all plans, books, accounts, vouchers, papers, and writings of the lessees: AND will at the expiration or sooner determination of the said term, deliver up to the lessor the demised mine so far as ungotten, and the demised plant and additions thereto and new works (except such as shall be removed

—to deliver accounts and plans half-yearly;

—which are to be conclusive unless error notified within six calendar months;

—to permit the lessor to enter to view the premises;

—to deliver up the premises at the end of the term;

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by the lessees under the provisions hereinafter contained, in such good and substantial repair and working order as aforesaid, and in all respects in such state and condition as shall be consistent with the due performance of the several covenants hereinbefore contained: AND will within twelve calendar months after the expiration or sooner determination of the said term, either clear so much of the said lands coloured *yellow* as shall have been used by the lessees by virtue of these presents from coal slack and rubbish, and, if required, from all roads and works which shall have been made thereon by the lessees by virtue of these presents, and restore the surface and fences, or pay compensation for the same after the rate of £—— per acre, and so in proportion for any less quantity: AND IT IS HEREBY AGREED that it shall not be lawful for the lessees during the said term or at or after the expiration or sooner determination thereof, without the previous licence in writing of the lessor, to take down or remove any or any part of the demised plant and additions thereto and new works, but it shall be lawful for the lessees at or within twelve calendar months after the expiration or sooner determination of the said term, to sell and to remove all engines, machinery, rails, sleepers, ropes, plant, and materials belonging to them, first giving the lessor the option of purchasing all or any part thereof, at such a price as the same would fairly be worth at the time of giving such option for the purpose of removal, such price if the parties differ to be settled by arbitration under the provision hereinafter contained, and so that the lessor shall be entitled to set off his purchase-money wholly or *pro tanto* as the case may admit against any monies, costs, damages, or expenses which may then be due or owing, or recoverable from, or payable by the lessees under any of the reservations or covenants herein contained: PROVIDED ALWAYS nevertheless that the lessees shall, if required, at the expiration or sooner determination of the said term, take down all or

—and to clear the land of rubbish, &c., and restore the surface.

Lessees not to remove buildings or fixtures demised without lessor's consent:

—but may sell their own machinery and plant, first giving the lessor the option of taking it at selling price.

Lessees to take down any buildings which the

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any of the engine-houses, offices, and buildings which may then be on the said lands coloured *yellow*, and dress and clean the bricks and materials thereof, and stack the same on the said land for the use of the lessor (*a*): PROVIDED ALSO that if and whenever any part of the rents and royalties hereinbefore reserved shall be in arrear for —— days, or there shall be a breach of any of the covenants or agreements by the lessees herein contained, or the lessees shall enter into, make or execute any composition with, or assignment for the benefit of their creditors, or in any manner become bankrupt, or being a company shall enter into liquidation, whether compulsory or voluntary (*b*), the lessor may re-enter upon any part of the demised mine and premises in the name of the whole, and thereupon the said term of —— years shall absolutely determine, without prejudice nevertheless to the recovery of any rent or other money then due or owing or to any right of distress or action that may have arisen under these presents prior to such re-entry: AND THE LESSOR doth hereby covenant with the lessees, THAT

lessor may require them to take down.

Proviso for re-entry.

Covenant by lessor;

(*a*) The following is a power of surrendering the lease when all the workable coal is exhausted: —

"PROVIDED ALWAYS, and it is hereby agreed that, if before the expiration of the said term the whole of the workable and marketable coal hereinbefore demised, except such part thereof as it shall not be incumbent upon the lessees to get and which they shall permanently leave ungotten, shall have been gotten, it shall be lawful for them, having paid the rents hereby reserved, and performed and observed the several covenants and agreements herein contained up to the time of the surrender, to surrender the said premises unto the lessor."

Proviso for surrender of premises when all the workable and marketable coal has been gotten.

(*b*) See *Horsey Estate, Limited* v. *Steiger*, [1898] 2 Q. B. 259; [1899] 2 Q. B. 499; *Ewart* v. *Fryer*, [1901] 1 Ch. 499; [1902] A. C. 187.

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they, paying the rents and royalties hereby reserved and made payable at the times and in the manner hereinbefore appointed for payment thereof respectively, and performing and observing all the covenants and agreements by the lessees herein contained, may peaceably and quietly hold, use, occupy, and enjoy the premises hereinbefore demised and granted, subject as hereinbefore expressed, during the said term of —— years, without any interruption or disturbance by the lessor, or any person lawfully claiming any estate in the same premises or any part thereof, through or under him: PROVIDED ALWAYS and it is hereby agreed that if any difference shall arise between the lessor and the lessees touching [*remainder of arbitration clause, supra*, p. 391]. PROVIDED ALWAYS that the expression "the lessor" hereinbefore used shall, wherever the context requires or admits, include his heirs and assigns, and the expression "the lessees" hereinbefore used shall, wherever the context requires or admits, include their executors, administrators, and assigns (*a*). IN WITNESS, &c.

—for quiet enjoyment.

Arbitration clause.

Interpretation clause.

(*a*) In a necessarily lengthy instrument of this description, it is sometimes convenient to place each clause in a separate paragraph, and also (whether the system of paragraphs be adopted or not) to have a marginal abstract, which may be taken from that given in the margin of the Precedent. If such an abstract be placed in the margin of the instrument, it will be well to add the following clause:—

"PROVIDED also [always] that the marginal notes respectively placed opposite the several clauses of these presents, and indicating or purporting to indicate the contents or objects of such clauses respectively, shall not be taken as part of these presents, or in any manner affect the construction hereof, or of any clause or thing herein contained."

Marginal notes not to affect the construction.

CXII.

Lease *by a* Mortgagee *and* Mortgagor.

Precedent CXII.

By mortgagee and mortgagor(*a*).

THIS INDENTURE, made the —— day of ——, 19--, between A., of, &c. [*mortgagee*], of the first part, B., of, &c. [*mortgagor*], of the second part, and C., of, &c. (hereinafter called the lessee), of the third part, witnesseth that the said A., at the request of the said B., and according to his estate and interest, doth hereby demise, and the said B. doth hereby demise and confirm unto the lessee [*Parcels*, *Habendum*, *Reddendum*, p. 396, *supra*]: Provided always that in the meantime, and until the said A., his heirs or assigns, shall require the payment of the said rent to him or them, and give to the lessee, or leave at or upon the said premises a notice in writing requiring such payment, the said rent shall be paid to the said B., his heirs or assigns, and his or their receipts shall be sufficient discharges for the same: Provided also that if at any time prior to such notice having been given or left as aforesaid, any part of the said rent shall be in arrear for twenty-one days, whether legally demanded or not, the said B., his heirs and assigns, may enter and distrain upon the said premises for the arrears of the said rent, and dispose of the distress or distresses then and there found as landlords may by law do for rent in arrear, to the intent that thereby the arrears so due and all costs occasioned by the said rent being so in arrear may be satisfied (*b*): And the lessee doth hereby for himself and his assigns covenant with

Parties.

Testatum.

Proviso that rent shall be paid to the mortgagor until notice by the mortgagee.

Power for mortgagor to enter and distrain.

Covenants by lessee;

(*a*) Sect. 18 of the Conv. Act, 1881, App. IV., *infra* (the operation of which is often excluded), applies only to the particular leases specified in sub-sect. 3, and mortgagors are sometimes unwilling to give general extended powers under sub-sect. 14.

(*b*) In the absence of such a power of distress, the mortgagor, not being the legal reversioner, cannot distrain. See, however, the Conv. Act, 1881 (App. IV., *infra*), ss. 10 and 11.

PRECEDENT CXII.

BY MORTGAGEE AND MORTGAGOR.

—to pay rent.

the said A. and also as a separate covenant with the said B., that the lessee will, during the said term, pay unto the said B., his heirs or assigns, until such notice as aforesaid shall have been given or left by the said A., his heirs or assigns as aforesaid, and thenceforth unto the said A., his heirs or assigns, the said rent hereinbefore reserved [*remainder of lessee's covenant to pay rent and other covenants*, pp. 397, 398, *supra*. *Insurance to be in such office* "as the person or persons for the time being in receipt of the said rent by virtue of the reservation and proviso hereinbefore contained shall approve," *and policy to be produced to* "the said A., his heirs or assigns, or the said B., his heirs or assigns," *no alteration to be made*, *supra*, pp. 407, 439, *without consent of* "the person or persons for the time being in receipt of the said rent as aforesaid," *power to enter to view*, *supra*, p. 399, *to be given to* "the said A., his heirs and assigns, and also the said B., his heirs and assigns," *any licence required to be described as* "the previous licence in writing of the said A., his heirs or assigns, and also of the said B., his heirs or assigns, until such notice as aforesaid shall have been given by the said A., his heirs or assigns," *or if convenient*, "of the person or persons for the time being in receipt of the said rent as aforesaid," *premises to be delivered up*, *supra*, p. 399, "to the said A., his heirs or assigns:"]

Proviso for re-entry.

PROVIDED ALWAYS, that if and whenever any part of the said rent shall be in arrear for thirty days, whether legally demanded or not, or there shall be a breach of any of the covenants by the lessee herein contained, either the said A., his heirs and assigns, or the said B., his heirs and assigns until such notice shall have been given by the said A., his heirs or assigns as aforesaid, may re-enter upon the said premises in the name of the whole, and thereupon the said term of —— years shall determine: AND EACH OF THEM the said A. and B., so far as relates to his own acts and the acts of all persons claiming through or under him, doth hereby

Covenant by mortgagee and mortgagor for

for himself and his assigns, covenant with the lessee [*for quiet enjoyment, supra*, p. 400, *substituting for the words* "by the lessor, or any person claiming through him," *the words* "by the said A. and B., or either of them, their or either of their heirs, executors, administrators, or assigns, or any person lawfully claiming through them or any of them." *Interpretation clause, supra*, p. 430]. In witness, &c.

PRECEDENT CXII.
BY MORTGAGEE AND MORTGAGOR.
quiet enjoyment.

CXIII.

Licence *to* Assign *a* Lease (*a*).

PRECEDENT CXIII.
LICENCE TO ASSIGN.

KNOW ALL MEN BY THESE PRESENTS that A., of, &c. [*lessor*], doth hereby grant unto B., of, &c. [*lessee*], licence to assign all his estate, term, and interest

Witnesseth.

(*a*) Formerly, if a licence were once given to do an act covenanted not to be done, or a forfeiture incurred by breach of a condition in a lease were once waived, the restrictive covenant or condition was in general wholly gone, and could not afterwards be enforced. See *Dumpor's Case*, 1 Smith's Leading Cases, and notes thereto. But now, by the joint effect of the Statutes 22 & 23 Vict. c. 35, ss. 1, 2, 3, and 23 & 24 Vict. c. 38, s. 6, the operation of such a licence or waiver is confined to the actual act licensed or forfeiture waived. If, as frequently happens, there are other leases of the same date and between the same parties, the deed should commence with the words, "to all to whom these presents shall come, A., of, &c., sends greeting"; the lease should be recited, setting out the parcels, and the covenant against assignment; and if the grantee be not the original lessee, the fact that it has become vested in the grantee with the licence of the lessor should be recited; also if the grantor be not the original lessor, the fact that the reversion has become vested in the grantor should be recited; after the recitals should follow the words, "Now these Presents witness that the said A."; and the words "premises comprised in the said indenture of lease," should be substituted for "hereditaments," &c.

PRECEDENT CXIII.

LICENCE TO ASSIGN.

Grant of licence.

in the hereditaments comprised in an indenture of lease, dated, &c., and expressed to be made between [*parties*], unto —— of ——, his executors and administrators, subject to the payment of the rent reserved by, and the performance and observance of the covenants by the lessee and conditions contained in the said indenture of lease, and henceforth to be paid, performed, and observed. As WITNESS, &c.

CXIV.

PRECEDENT CXIV.

SURRENDER *of a* LEASE.

SURRENDER OF LEASE.

Parties.

Recital of lease.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. [*executor of lessee*], of the one part, and C. D., of, &c. [*lessor*], of the other part. WHEREAS (*a*), by an indenture of lease, dated, &c., and expressed to be made between the said C. D., of the one part, and E. B., of the other part, ALL THAT parcel of ground, situate, &c., and also the messuage or dwelling-house, stables, and coach-house thereon erected, and numbered — in —— Street aforesaid, with the appurtenances, were demised to the said E. B., for the term of —— years from the —— day of ——, 18—, at the yearly rent of £——, and subject to covenants by the lessee and conditions therein contained;

Of will of lessee.

AND WHEREAS the said E. B. died on the —— day of ——, having by his will, dated the —— day of ——, appointed his son, the said A. B., sole executor thereof, who proved the same will in the —— Registry (*b*) on the —— day of ——: AND WHEREAS the covenants by the lessee, and conditions contained in the hereinbefore recited indenture of lease, have not been fully performed and observed, and the said messuage, stables, and coach-

That the lessee's covenants have not been performed.

(*a*) If the surrender is made by indorsement this recital will not be required.

(*b*) See n. (*a*), p. 153, *supra*.

PRECEDENT CXIV.

SURRENDER OF LEASE.

house have become greatly dilapidated, and the said C. D., at the request of the said A. B., has agreed to accept a surrender of the said premises comprised in the said indenture of lease in satisfaction of all claims and demands in respect of such dilapidations. Now THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises, HE, the said A. B., as PERSONAL REPRESENTATIVE of the said E. B., doth hereby assign and surrender unto the said C. D., all the said parcel of ground, messuage, stables, coach-house, hereditaments, and premises comprised in and expressed to be demised by the said indenture of lease, TO THE intent that the residue now to come of the said term of —— years expressed to be granted by the same indenture may be merged in the reversion expectant thereon, and by that means become extinguished (*a*). IN WITNESS, &c.

And of agreement for surrender.

Witnesseth.

Surrender.

To the intent that the term may merge.

(*a*) A surrender to be valid and effect a merger of the term must be made to the person in whom the reversion is vested; and accordingly it was held in *Robbins* v. *Whyte*, [1906] 1 K. B. 125, that a surrender to a mortgagor of a lease granted by him under sect. 18 of the Conveyancing Act, 1881, was void.

Partition.

CXV.

PRECEDENT CXV. — PARTITION.

PARTITION DEED *by* TWO PERSONS, ONE SHARE *being in* SETTLEMENT, *and disposed of by the* TENANT *for* LIFE (*a*).

Parties.

Recital of title to one undivided moiety of the property;

—of title to the other undivided moiety;

—of agreement for partition.

Witnesseth.

THIS INDENTURE, made, &c., BETWEEN A., of, &c., of the first part, B., of, &c., and C., of, &c., of the second part, and D., of, &c., of the third part. WHEREAS, by an indenture, dated the —— day of ——, and expressed to be made between [*parties*], one undivided moiety of the hereditaments hereinafter assured, was limited to the use of the said A. and his assigns for his life, without impeachment of waste, with remainders over in settlement, and the said B. and C. were appointed trustees of the said settlement, for the purposes of the Settled Land Act, 1882. AND WHEREAS the said D. is seised of the other undivided moiety of the same hereditaments in fee simple in possession, free from incumbrances. AND WHEREAS the said A. and D. have agreed to make partition of the said hereditaments in the shares and manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises, and of £—— this day for equality of partition, paid to the said D. by the said B. and C., according to the direction of the said A., out of capital monies in the hands of the said B. and C. as such trustees

(*a*) See Precedent XVII., *supra*, and the notes to that Precedent. As to registered land, see pp. 97—101, *supra*. A partition is not within the compulsory provisions of the Land Transfer Act, 1897.

as aforesaid, which have arisen under the Settled Land Act, 1882, or are otherwise applicable for the purpose (the receipt of which sum the said D. doth hereby acknowledge), he the said A., as to and AS BENEFICIAL OWNER (*a*) of the undivided moiety comprised in the said indenture of settlement of the said hereditaments, doth hereby, in exercise of the power for this purpose by the said Act given to him as the tenant for life thereof, grant and convey, and he the said D., as to, and AS BENEFICIAL OWNER of his undivided moiety of the said hereditaments doth hereby grant and convey to the said B. and C. (*b*), and their heirs, ALL the —— and hereditaments situate in the parish of —— in the county of ——, specified in the two schedules hereto and delineated on the map annexed to these presents and thereon coloured —— and —— respectively, TO HOLD the premises UNTO the said B. and C., and their heirs, TO THE USES upon the trusts, and subject to the powers and provisions hereinafter limited and declared or referred to concerning the same respectively. AND IT IS HEREBY DECLARED, that the grant and conveyance hereinbefore contained shall enure AS TO the hereditaments comprised in the first schedule hereto, and on the said map coloured ——, TO THE USES, upon the trusts, and with and subject to the powers and provisions which, under the said indenture of settlement, or by reason of the exercise of any power of charging therein contained, were subsisting immediately before the execution of these presents with respect to the undivided moiety therein comprised of the said premises hereby assured, but not so as to increase or multiply charges or powers of charging; AND AS TO the hereditaments com-

Conveyance.

Parcels.

Habendum.

Declaration of uses.

(*a*) See *supra*, p. 141, n. (*a*).

(*b*) It should be observed that though the assurance is made with the aid of the Statute of Uses, a separate grantee is not needed, the trustees of the settlement not being conveying parties, and being therefore competent, even under the old law, to receive the grant and serve the uses.

PRECEDENT CXV.

PARTITION.

prised in the second schedule hereto and on the said map coloured ——, TO THE USE of the said D., his heirs and assigns [*Proviso restricting liability of tenant for life under his implied covenants, supra,* p. 159, *inserting before* "the said premises" *the words* "the undivided moiety comprised in the said indenture of settlement of"]. AND the said A. doth hereby acknowledge the right of the said D. to production and delivery of copies of the hereinbefore recited indenture, and undertake for safe custody thereof (*a*). IN WITNESS, &c.

THE FIRST SCHEDULE above referred to.

THE SECOND SCHEDULE above referred to.

(*a*) On a partition each party generally retains all muniments of title relating to his own original undivided share, and the production of such muniments should be secured to the other party by such an acknowledgment of right to production and undertaking for safe custody under sect. 9 of the Conv. Act, 1881, App. IV., *infra*, as in the text, or by a covenant for production in the usual form. In this Precedent the recited indenture is the only recited deed relating exclusively to the share of one party. Any acknowledgment or undertaking, or covenant for production, in respect of muniments relating to the common title, which are not recited, but which must of course exist, and will be retained by one of the parties, would probably be given by a separate instrument. It will be generally convenient to have the deed executed in duplicate.

Exchange.

CXVI.

Deed of Exchange (*a*).

PRECEDENT CXVI.

EXCHANGE.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part. Parties.

WHEREAS the said A. B. is seised of the hereditaments comprised in the first schedule hereto in fee simple in possession, free from incumbrances, and the said C. D. is seised of the hereditaments comprised in the second schedule hereto, in fee simple in possession, free from incumbrances. Recital of estates in the property;

AND WHEREAS the said A. B. and C. D. have agreed to make an exchange, in manner hereinafter appearing, of the said hereditaments comprised in the said first and second schedules hereto respectively. —of agreement for exchange.

NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the conveyance hereinafter contained, by the said C. D., he the said A. B., AS BENEFICIAL OWNER, doth hereby grant unto the said C. D. and his heirs, ALL THOSE the —— and hereditaments, situate in the parish of ——, in the county of ——, specified in the said first schedule hereto and delineated on the map annexed to these presents, and thereon coloured ——, TO HOLD the said premises UNTO and TO THE USE of the said C. D. and his heirs, IN EXCHANGE for the said here- Witnesseth. Conveyance by one party. Parcels. Habendum.

(*a*) As to registered land, see pp. 100, 97--99, *supra*. Registration of an exchange is not compulsory under the Land Transfer Act, 1897.

PRECEDENT CXVI.

EXCHANGE.

Witnesseth, secondly.

Conveyance by the other party.

Parcels.

Habendum.

ditaments hereinafter conveyed in exchange by the said C. D. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and in consideration of the conveyance by the said A. B. hereinbefore contained, he the said C. D., as BENEFICIAL OWNER, doth hereby grant unto the said A. B., his heirs and assigns, ALL THOSE the —— and hereditaments situate in the parish of ——, in the county of ——, specified in the said second schedule hereto, and delineated on the map annexed to these presents, and thereon coloured ——, TO HOLD the said premises UNTO and TO THE USE of the said A. B., his heirs and assigns, IN EXCHANGE for the said hereditaments hereinbefore conveyed in exchange by the said A. B. IN WITNESS, &c. (*a*).

THE FIRST SCHEDULE above referred to.

THE SECOND SCHEDULE above referred to.

(*a*) The deed must be executed in duplicate. Where either of the properties is in settlement, the title will be recited and the property taken in exchange will be conveyed to the uses of the settlement. Cf. the Precedent of a partition deed, *supra*, p. 462. As to the stamp duty on exchanges and partitions, where money is paid for equality of exchange or partition, see the Finance (1909-10) Act, 1910, s. 73; and where such money exceeds £100 and does not exceed £500, it may be proper to introduce a statement corresponding with that at the end of Precedent IV., p. 133, *supra*. It does not appear that any increment value duty is payable on an exchange or partition.

Settlements (*a*).

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Precedent CXVII.

On marriage, of wife's stock.

Settlement *on Marriage, of a sum of* Stock *belonging to the Wife.*

Parties.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*intended husband*], of the first part, B., of, &c. [*intended*

(*a*) The Married Women's Property Act, 1882 (45 & 46 Vict. c. 75, Appendix XII., *infra*), does not affect materially the system of marriage settlements which, so far as regards the wife's property, are intended, not to secure to her an absolute power of disposition over such property, and thus leave her open to undue influence on the part of her husband, but to secure the property for the common benefit of the husband and wife and the issue of the marriage. (See a note on the repealed Act of 1870 in Dav. Prec. Conv. 3rd ed. vol. iii. p. 253.) It may, however, have rendered settlements of the wife's property less usual, especially as to after-acquired property which, in cases where the wife and issue were already sufficiently provided for, was, even before the Act, sometimes settled to the wife's separate use. And as under sects. 1 and 2 of the Act of 1882 every woman married on or after the 1st January, 1883, is entitled to hold as her separate property and dispose as if she were a *feme sole* of all property which may belong to her at the time of her marriage, or which she may afterwards acquire, it is of course unnecessary to insert in a marriage settlement any special provisions as to property of the wife which it is desired she shall hold for her separate use. It may not, in most cases, be necessary to insert in such a settlement words expressive of the intention that the wife's interests under the settlement shall be for her separate use (see *Re Lumley*, [1896] 2 Ch. 690); but (regard being had to sect. 19 as judicially interpreted) it has been thought safer that such words should be inserted throughout the following Precedents of settlements; and the wife may, and should, when it is so desired, be restrained from anticipation as before the Act (see sect. 19), and the

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ON MARRIAGE, OF WIFE'S STOCK.

wife], of the second part, and C., of, &c., D., of, &c., and E., of, &c. [*trustees*] (hereinafter called the trustees), of the third part, WITNESSETH, that in consideration of a marriage intended to be shortly solemnized between the said A. (hereinafter called the husband) and the said B. (hereinafter called the wife), IT IS HEREBY AGREED, that the trustees shall hold the sum of £——, Two-and-a-half per Cent. Consolidated Stock belonging to the wife, and lately transferred by her into the names of the trustees, IN TRUST for the wife, until the said intended marriage; AND, AFTER the solemnization thereof, shall either permit the said stock, or any part thereof, to remain unaltered, or shall, with the consent in writing of the husband and wife during their joint lives, and of the survivor of them during his or her life, and after the death of such survivor, at the discretion of the trustees sell the same or any part thereof, and lay out the monies produced by such sale [in the names or under the legal control of them the trustees (*a*)] in any of the stocks, funds, shares,

Witnesseth.

Declaration of trust:

—for the wife till the marriage

Trusts as to investment and varying investment.

restraint should be extended to her reversionary interests, which it may be desired to protect. As to registration under sects. 3 and 4 of the repealed Act of 1870, of Government stock and of paid-up shares or stock of public companies as separate property of a married woman, see *Reg.* v. *Carnatic Railway Company*, L. R. 8 Q. B. 299, and *Howard* v. *Bank of England*, L. R. 19 Eq. 295. In the later editions of this work the various Precedents of settlements have for the most part been further shortened or simplified by the use of definitions, and by providing for the devolution of the powers of the trustees by a separate interpretation clause. It will be observed that in the Precedents of marriage settlements the intended husband and wife are generally referred to by these respective designations. The inaccuracy of thus describing the parties by reference to a relation not existing, may perhaps be justified, on the ground that the settlement has no actual operation until that relation has been acquired; at any rate the English language affords no convenient mode of describing them by reference to their existing relation. And their respective names can be substituted, if desired, without difficulty.

(*a*) These words are hardly necessary, and should be omitted where contributory mortgages are allowed.

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or securities for the time being authorized by law for the investment of trust funds (*a*), and may from time to time with such consent or at such discretion as aforesaid, vary such investments for others of any kind hereby authorized, AND SHALL pay the income of the said sum of £——, Two-and-a-half per Cent. Consolidated Stock, and of the investments for the time being representing the same to the wife during her life, and so that during her said intended coverture the same shall be and remain her separate property without power of anticipation (*b*); AND, after the death of the wife (if the husband shall survive her), shall pay the same income to the husband during his life: AND, after the death of the husband and the wife shall hold the said premises, and the income thereof, IN TRUST for all or any such one or more of the issue (*c*) of the said intended marriage [if more than one

Trust for wife for life;

—for husband for life if he survives;

—for issue of the marriage, as husband

(*a*) See the Trustee Act, 1893 (App. XVI., *infra*), and the notes to that Act. It is thought that as a general rule the investments intended to be allowed should be specified as hitherto, and forms for that purpose will be found in the next Precedent, and the notes to that Precedent.

(*b*) Sometimes the restraint is extended to any subsequent coverture; but this would seem to be improper, because a marriage settlement is made with a view to and for the purposes of the marriage, and should be confined to those purposes.

(*c*) As to the advantage of extending the power of appointment to remoter issue as well as children, see Davidson's Prec. Conv., vol. iii. 3rd ed. p. 144. A power to appoint to "issue" includes all issue, however remote, but the estates created by such a power as that in the text must be made to vest within twenty-one years from the death of the donee of the power, otherwise they would be void as tending to a perpetuity, and the funds would go as in default of appointment. See Sugd. Pow., 8th ed. p. 397. By 37 & 38 Vict. c. 37, an exclusive appointment may, from the passing of that Act (30th July, 1874), be validly made under any power; but it is better still to frame powers, as in the text, so as to properly authorise such an appointment. It is thought that the form of power in the text, without the additions in square brackets, does not authorise the donees to vest in the trustees discretionary powers in respect of the appointed shares (see Dav. Prec. Conv., vol. iii.

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in such shares, and with such executory or other trusts, powers of advancement (either overreaching the interests prior to this power or not), and other powers exerciseable at the discretion of the donees or donee, or otherwise, and provisions of any description for their respective benefit and generally in such manner in every respect] as the husband and the wife shall by deed jointly appoint; AND, in default of and subject to any such appointment, as the survivor of the husband and the wife shall by deed, or will or codicil appoint; AND, in default of and subject to any such appointment, IN TRUST for all the children or any the child of the said intended marriage, who being sons or a son shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or marry, and if more than one, in equal shares (*a*); PROVIDED ALWAYS, that no child who or whose issue shall take any part of the said premises under any such appointment as aforesaid shall, in default of appointment to the contrary, be entitled to any share of the unappointed part of the said premises, without bringing the share appointed to him or her or his or her issue into hotchpot: PROVIDED ALWAYS, that (in addition to the ordinary powers of maintenance and ancillary powers and trusts by law vested in trustees), the trustees may, after the death of the survivor of the husband and the wife, or in the lifetime of them or the survivor of them, if they, he, or she shall so direct in writing, raise any part or parts, not exceeding in the whole one half of the then expectant, presumptive, or vested share or fortune of any child under the trusts

and wife shall jointly appoint;

—in default, as survivor shall appoint;

—in default, for children equally.

Hotchpot clause.

Power of advancement.

pt. ii. p. 159, 3rd ed.). It should be noticed that the authority to overreach prior interests cannot be properly given without qualification, where the power of appointment is vested in either husband or wife alone.

(*a*) No practical difficulty arises with respect to the application of the income of the share of a married female infant, and therefore no provision is usually made for that case. See, however, a married female infant's receipt clause, p. 603, *infra*.

hereinbefore declared, and apply the same (*a*) for his or her advancement or benefit (*b*). AND IT IS HEREBY DECLARED, that, if there shall be no child of the said in-

(*a*) Though this clause seems sufficient for ordinary purposes, it may sometimes be desirable to introduce here the following words:— Dispositions,

"For the education, outfit, or starting or preferment in life, of such child being a son contemplating or entering upon or engaged in any business, profession or pursuit, or for the portion or outfit of such child being a daughter upon or in contemplation of her marriage, or otherwise in any manner."

(*b*) The power conferred upon trustees and executors by the 43rd section of the Conv. Act, 1881 (Appendix IV., *infra*), of applying the income of funds to which infants are entitled in expectancy towards their maintenance, and of accumulating income not so applied, has (as sect. 26, now repealed, of 23 & 24 Vict. c. 145, had previously) rendered the clauses below no longer essential, see *supra*, pp. 61, 62. As, however, their insertion is occasionally desired, they are here given for use when needed.

"AND IT IS HEREBY DECLARED, that the trustees shall, after the decease of the survivor of the husband and the wife, apply the whole or such part as the trustees shall think fit, of the annual income of the share or fortune to which any child shall for the time being be entitled in expectancy under the trusts hereinbefore declared, for or towards the maintenance or education of such child, either directly, or, by paying the same for such purpose to his or her guardians or guardian, without seeing to the application thereof: AND SHALL, during such suspense of absolute vesting, accumulate the residue (if any) thereof in the way of compound interest, by investing the same, and the resulting income thereof, in or upon any such stocks, funds, shares, or securities as are hereinbefore mentioned, for the benefit of the person or persons who, under the trusts herein contained, shall become entitled to the principal fund from which the same respectively shall have proceeded, with power for the trustees to resort to the accumulations of any preceding year or years, and apply the same for or towards the maintenance or education of the child for the time being presumptively entitled to the same respectively." Maintenance and education. Accumulation clause.

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tended marriage, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then, without prejudice to the trusts hereinbefore declared, and after the death of the husband, and such default or failure of children as aforesaid, the trustees shall hold the said trust premises, and the income of the same, or so much thereof respectively as shall not have become vested or been applied under any of the trusts or powers herein contained or by statute implied, IN TRUST for such persons and purposes and in such manner as the wife shall, when discovert by deed, or whether covert or discovert by will or codicil appoint, AND in default of and subject to any such appointment, UPON THE TRUSTS FOLLOWING (that is to say) IF the wife shall survive the husband, then IN TRUST for the wife as her separate property, but so that she shall not during her said intended coverture have power to dispose of or charge such contingent interest by anticipation; BUT IF the husband shall survive the wife, then IN TRUST for such person or persons as, under the statutes for the distribution of the effects of intestates would have become entitled thereto at the death of the wife, had she died possessed thereof intestate (*a*), without having been married (*b*), such persons, if more than one, to take as tenants in common in the shares in which they would have been entitled under the same statutes. AND IT IS HEREBY AGREED, that the power of appointing a new trustee or new trustees of these presents shall be exerciseable by the husband and the wife during their joint lives, and by the survivor of them during his or her life. IN WITNESS, &c. (*c*).

in default of children entitled under the preceding trusts in favour of wife, her appointees, or next-of-kin.

Power to appoint trustees.

(*a*) It may sometimes be desirable to add "domiciled in England."

(*b*) It has now been finally settled, after considerable difference in judicial opinion, that these words exclude issue of the wife, unless the context or the circumstances require a different meaning to be given to them: *Re Brydone's Settlement*, [1903] 2 Ch. 84.

(*c*) It will be observed that in all the Precedents the receipt and trustee clauses formerly employed are omitted, their places being

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SETTLEMENT *on* MARRIAGE *of* STOCKS *belonging to the* WIFE, *and of* STOCKS *and* SECURITIES *purchased by the* HUSBAND *in the names of the* TRUSTEES. POWER *to* PURCHASE LAND. AGREEMENT *to settle* AFTER-ACQUIRED PROPERTY *of the* WIFE.

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ON MARRIAGE, OF WIFE'S AND HUSBAND'S STOCKS, AND WIFE'S AFTER-ACQUIRED PROPERTY.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*intended husband*], of the first part, B., of, &c. [*intended* Parties.

sufficiently supplied in all ordinary cases by the enactments contained in the 23rd and 31st sects. of 22 & 23 Vict. c. 35, and the 20th sect. (see also sect. 21) of the Trustee Act, 1893 (replacing sect. 36 of the Conv. Act, 1881); the Vendor and Purchaser Act, 1874, App. II., *infra*, sects. 2 and 3; and the Trustee Act, 1893, App. XVI., *infra*. In most cases, however, a clause similar to that in the text should be inserted by way of supplement to the statutory provisions, as otherwise the persons beneficially interested would be deprived of that power of selecting their own trustees, which it is desirable that they should possess. The additional powers and indemnities given in the next Precedent are also proper additions to those provided by the statutes in the cases where such provisions are applicable, and may be omitted, altered, or added to, as circumstances may require. The trustee clauses, used previously to the passing of 23 & 24 Vict. c. 145, were as follows:-

"AND IT IS HEREBY DECLARED, that the receipt in writing of the trustees or trustee for the time being of these presents, for any monies, stocks, funds, shares, or securities paid or transferred to them or him in pursuance of these presents or the trusts thereof, shall effectually discharge the person or persons paying or transferring the same therefrom, and from being concerned to see to the application thereof. AND IT IS HEREBY DECLARED, that if the said trustees hereby appointed, or any of them, or any trustee or trustees to be appointed as hereinafter is mentioned, shall die, or desire to be discharged, or refuse or become incapable to act, then, and so often the husband and the wife, or the survivor of them, or (after the death of such survivor) the surviving or continuing trustees or trustee for the time being (and for this purpose every retiring or refusing trustee shall, if willing to act in the execution of this power, be considered a continuing trustee), may appoint a new

Trustees' receipt clause.

Power to appoint new trustees.

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wife], of the second part, and C., of, &c., D., of, &c., and E., of, &c. [*trustees*] (hereinafter called the trustees), of the third part. WHEREAS a marriage is intended to be solemnized between the said A. (hereinafter called the husband), and the said B. (hereinafter called the wife). AND WHEREAS, in pursuance of an agreement entered into upon the treaty for the same, the wife has, with the approbation of the husband, transferred into the names of the trustees, the stocks specified in the first schedule hereto to be held in trust for the wife, her executors and administrators, until the said intended marriage, and after the solemnization thereof upon the trusts hereinafter declared concerning the same. AND WHEREAS, in further pursuance of the said agreement, the husband, with the approbation of the wife, has shortly before the execution of these presents, out of his own monies, purchased in the names of the trustees, the stocks and securities specified in the second schedule hereto, to be held in trust for the husband, his executors and adminis-

Recital of intended marriage;

—of stock, belonging to the wife, having been transferred to the trustees;

—of the purchase by the husband of stocks and securities in the name of the trustees;

trustee or new trustees in the stead of the trustee or trustees so dying, or desiring to be discharged, or refusing or becoming incapable to act; AND, upon every such appointment, the said trust premises shall be so transferred that the same may become vested in the new trustee or trustees jointly with the surviving or continuing trustees or trustee, or solely, as the case may require; and every such new trustee shall (as well before as after the said trust premises shall have become so vested) have the same powers, authorities, and discretion, as if he had been hereby originally appointed a trustee. AND IT IS HEREBY DECLARED, that the trustees for the time being of these presents shall be respectively chargeable only with such monies as they respectively shall actually receive, and shall not be answerable for each other, nor for any banker, broker, or other person in whose hands any of the trust monies shall be placed, nor for the insufficiency or deficiency of any stocks, funds, shares, or securities, nor otherwise for involuntary losses; AND that the said trustees for the time being may respectively reimburse themselves out of the trust premises all expenses incurred in or about the execution of the aforesaid trusts and powers."

Trustees' indemnity clause.

trators, until the said intended marriage, and after the solemnization thereof upon the trusts hereinafter declared concerning the same. AND WHEREAS on the treaty for the said intended marriage, it was agreed that such provision should be made for the settlement of other and after-acquired property of the wife, as is hereinafter contained. NOW THIS INDENTURE WITNESSETH, that in further pursuance of the said agreements in this behalf, and in consideration of the said intended marriage, IT IS HEREBY AGREED, that, after the solemnization of the said intended marriage, the trustees shall either permit all or any of the stocks and securities specified in the said first and second schedules hereto respectively, or any part or parts thereof respectively, to remain unaltered, or shall with the consent in writing of the husband and the wife during their joint lives, and of the survivor of them

—of agreement to settle after-acquired property.

Witnesseth.

Declaration of trust.

Trusts as to investments and varying investments giving a wide range (*a*).

(*a*) The power of investment in the text is somewhat wide, but it is thought that a wide power is, on the whole, preferable to a limited power. The following are alternative forms, the first being very extensive, and the second restricted. See also the power in the last preceding Precedent, p. 468, *supra*, authorising only statutory investments, and note (*a*) on p. 469, and the trustees' additional indemnity clauses at the end of this Precedent.

Power of investment giving very extensive range.

"In any of the public stocks or funds, or Government securities of the United Kingdom or India, or any colony or dependency of the United Kingdom, or any foreign country or state, or upon freehold, copyhold, leasehold, or chattel real securities in England or Wales or Ireland, or upon heritable, real, or leasehold securities in Scotland or India, or any colony or dependency of the United Kingdom or any foreign country, or in or upon the stocks, funds, shares, debentures, mortgages, or securities of any corporation, body, or company, municipal, county, local, commercial, or of any other description in the United Kingdom or India, or any colony or dependency of the United Kingdom, or any foreign country, or upon the

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during his or her life, and after the death of such survivor, at the discretion of the trustees, sell the same or any part or parts thereof and lay out the monies produced by such sales [in the names or under the legal control of them, the trustees (*a*)], in any of the public stocks

security of any interest, for or determinable with a life or lives in real or personal property wheresoever situate (*b*) or arising, together with a policy or policies of assurance on such life or lives [or on personal security only]."

Power of investment giving restricted range.

"In any of the public stocks or funds, or Government securities of the United Kingdom or India, or in stock of the Bank of England, or upon real securities in England [or Wales], or in or upon the debentures or the debenture, guaranteed, or preference stocks or shares of any [railway or water] company in the United Kingdom or India, incorporated by special Act of Parliament [upon or in relation to which a fixed or minimum interest or dividend, or rent, or rent-charge shall be secured or guaranteed by the same or some other company, or by the Government of India], or in or upon the stocks, bonds, debentures, or securities of any public, municipal, county, or local body or authority in the United Kingdom (but not in any other mode of investment)."

The following addition prohibits securities to bearer:—

Prohibition of securities to bearer.

"But not in any securities to bearer or transferable by mere delivery or delivery and indorsement, though coming within the general description of the investments hereinbefore authorized [and not in any mode of investment other than the modes hereinbefore authorized]."

(*a*) Omit these words if contributory mortgages are allowed. See *infra*, p. 484, n. (*c*).

(*b*) See *I. R. Commissioners* v. *Muller*, [1901] A. C. 217.

or funds, or Government securities of the United Kingdom, or India, or any colony or dependency of the United Kingdom, or upon freehold, copyhold, leasehold, or chattel real securities in England [or Wales] [or Ireland], or in or upon the shares, stocks, debentures, mortgages, or securities of any company or corporation or body, whether commercial, municipal, county, local, or otherwise, carrying on business (*a*) or constituted for any purpose in Great Britain [or Ireland], or any colony or dependency of the United Kingdom [or upon the security of any interest for or determinable with a life or lives in real or personal property wherever situate or arising, together with a policy or policies of assurance on such life or lives] (but not in any other mode of investment), and may from time to time with such consent or at such discretion as aforesaid vary such investments for others of any kind hereby authorized; AND SHALL pay the income of the stocks specified in the said first schedule hereto and of the investments for the time being representing the same (hereinafter referred to as the wife's fund(*b*), to the wife, during her life, but so that during her said intended coverture such income shall be and remain her separate property without power of anticipation; AND after the death of the wife, if the husband shall survive her, shall pay the same income to the husband during his life: AND shall pay the income of the stocks and securities specified in the said second schedule hereto and of the investments for the time being representing the same respectively (hereinafter referred to as the husband's fund), to the husband during his life, and after the death of the

Trust for the wife for life;

—for the husband for life;

(*a*) As to the meaning of "carrying on business," see *Grant* v. *Anderson & Co.*, [1892] 1 Q. B. 108.

(*b*) This mode of referring to the several funds not only shortens, but also in many cases greatly simplifies, and conduces to the perspicuity of the deed, and its use is, for that reason, illustrated in the present Precedent, which, however, would be practically as short, and quite as intelligible without it.

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husband, if the wife shall survive him, shall pay the same income to the wife during her life, but so that during her said intended coverture such reversionary interest shall be and remain her separate property, without power of anticipation; AND after the death of the survivor of them, the husband and the wife, shall hold the wife's fund and the husband's fund and the income thereof respectively IN TRUST for [*the issue of the marriage as the husband and wife or the survivor shall appoint; in default of appointment for the children of the marriage, supra,* pp. 469, 470]. PROVIDED ALWAYS, that no child who or whose issue shall take any part of the trust property subject to the trusts of these presents under any appointment shall, in default of appointment to the contrary, be entitled to any share of the unappointed part of such trust property without bringing the share appointed to him or her, or to his or her issue into hotchpot [*power of advancement, supra,* p. 470]. AND IT IS HEREBY AGREED, that, if there shall be no child of the said intended marriage, who, being a son, shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then, without prejudice to the trusts hereinbefore declared, the trustees shall hold the wife's fund and the income of the same, or so much thereof respectively as shall not have become vested or been applied under any of the trusts or powers herein contained or by statute implied, from and after the death of the husband and such default or failure of children as aforesaid, which shall last happen, UPON THE TRUSTS following, that is to say [*trust for appointees of wife and for wife surviving or for her next of kin if the husband survives, supra,* p. 472], AND SHALL hold the husband's fund and the income of the same, or so much thereof respectively as shall not have become

—for issue of marriage.

Hotchpot clause (*a*).

Dispositions, in default of children entitled under the preceding trusts;

—partly for the wife and partly for the husband.

(*a*) This form of hotchpot clause is preferable where (as in the present settlement) funds are settled by reference. See *Re Marquis of Bristol*, [1897] 1 Ch. 946, and p. 545, *infra*, n. (*b*).

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vested or been applied under any of the trusts or powers herein contained or by statute implied, from and after the death of the wife, and such default or failure of children as aforesaid, which shall last happen, IN TRUST for the husband, his executors, administrators, and assigns. PROVIDED ALWAYS, and it is hereby agreed, that the trustees may during the lives of the husband and the wife, and the life of the survivor of them, and upon their, his, or her request in writing, invest (*a*) all or any part of the monies subject to the trusts hereinbefore declared (and for that purpose may convert into money, or call in any stocks, funds, shares, or securities for the time being subject to the aforesaid trusts), in the purchase of any freehold or copyhold hereditaments in England or Wales, for any estate of inheritance, or of any leasehold hereditaments in England or Wales, for any term of years, whereof not less than *sixty* shall be unexpired at the time of such purchase, or in the enfranchisement of any copyhold hereditaments which shall have been purchased under this power [or in rebuilding, enlarging, adding to, repairing and decorating in a substantial and permanent manner, or otherwise improving any messuage so purchased, or the stables, offices, and buildings belonging

Power to lay out trust monies in the purchase of land.

(*a*) The following form contemplates only the application of a limited sum in the purchase of a house and adjacent lands:—

Power to purchase house.

"Raise out of the said trust premises any sum or sums not exceeding altogether £——, and apply the same in the purchase of any messuage suitable or capable of being used or adapted as a residence for the husband and the wife or the survivor of them and (either at the same or at any subsequent time) of any land or hereditaments convenient to be held therewith, such messuage, lands, and hereditaments to be situate in England or Wales, and to be either freehold or copyhold of inheritance or leasehold for any term, &c."

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thereto or connected therewith (*a*)]: AND it is hereby agreed that all such hereditaments shall be vested in the trustees, as to freehold or copyhold hereditaments in fee simple, and as to leasehold hereditaments for the leasehold interest subsisting therein, UPON TRUST that the trustees shall, upon the request in writing of the husband and the wife, or the survivor of them, during their, his, or her life, and after the death of such survivor, at the discretion of the trustees, sell the same hereditaments: AND SHALL hold the monies to arise from any such sale (after payment thereout of the costs attending the same), upon the same trusts, and with and subject to the same powers and provisions (including the said power of purchasing hereditaments), as the money laid out in the purchase of such hereditaments would then have been subject to if the same had not been so laid out: AND SHALL in the meantime, and until all such hereditaments shall be sold, pay or apply the net rents and profits thereof, or of the part thereof for the time being unsold, in the manner in which the income of the trust premises applied in the purchase thereof as aforesaid would have been payable or applicable under the trusts hereinbefore declared, in case such purchase had not been made. PROVIDED ALWAYS, and it is hereby agreed, that in the meantime until all the said purchased hereditaments shall be sold as aforesaid, the trustees shall manage or superintend the management of the said premises with all the powers in that behalf of absolute owners, and also may upon such request or at such discretion as aforesaid, demise the same or any part or parts thereof at rack rent from year to year or for any term of years, not exceeding twenty-one years, to take effect in possession,

Power of leasing (*b*).

(*a*) As to the expediency of providing at least for repairs, see *Re Freeman*, [1898] 1 Ch. 28; *Re Farnham's Settlement*, [1904] 2 Ch. 561.

(*b*) See pp. 562, 563, *infra*, for a larger leasing power, and note (*a*) at p. 529, *infra*.

Agreement to settle after-acquired property of the wife.

or within six calendar months from the making of the demise. AND IT IS HEREBY AGREED, that if the wife at the date of the said intended marriage shall be, or if, during the said intended coverture, she or the husband in her right (*a*), or if, after her death, the husband in her right (*b*), shall at one time and from one source become seised or possessed of, or entitled to, or have an absolute power of disposition of (*c*), any real or personal property of the value of £—— or upwards for any estate or interest

(*a*) It is thought that notwithstanding the Married Women's Property Act, 1882 (App. XII., *infra*), this agreement should expressly include property acquired by the husband in right of his wife during the coverture, *e.g.*, chattels real of the wife, which, though her separate property by virtue of the Act, will still apparently, upon her death intestate, belong to the husband without the necessity of taking out letters of administration to her estate. See *Surman* v. *Wharton*, [1891] 1 Q. B. 491. The stamp duty in respect of this covenant appears to be 10*s.* only, no definite or certain sum being thereby settled.

(*b*) The words "or if after her death the husband in her right" are inserted with reference to the case of *Pearce* v. *Graham*, 32 L. J. Ch. 359, where a legacy bequeathed by a father to a daughter, who predeceased him, which, as she left surviving issue, passed under sect. 33 of the Wills Act to her husband in her right, was held not to be comprised in a covenant for settlement of all property coming to her or her husband in her right during the coverture. When the intended wife has at the date of the settlement no surviving parent or grandparent, these words should be omitted.

(*c*) The words "or have an absolute power of disposition of" are inserted to meet such a case as that of *Bower* v. *Smith*, L. R. 11 Eq, 279 (more accurately reported 19 W. R. 399, and 40 L. J. Ch. 194; see *Steward* v. *Poppleton*, W. N. 1877, p. 29; *Tremayne* v. *Rashleigh*, [1908] 1 Ch. 681), in which a covenant for settlement of any property to which the wife should become entitled of the value of £500 or upwards was successfully evaded by the wife making successive appointments in her own favour in sums of less than £500 of a sum much exceeding that amount, which had become subject to her absolute power of appointment. The question has been raised whether a general covenant of this description is not too vague to be enforced, but it appears to be admitted that if there be any such rule, covenants by the wife in marriage settle-

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(except the property hereinbefore settled, and except jewels, ornaments, plate, furniture, pictures, books, and other chattels of a similar nature, which it is hereby agreed shall belong to the wife for her separate use), THEN, and in every such case, the wife and all other necessary parties shall, at the cost of the trust estate, as soon as circumstances will admit, do all such acts and things as shall be necessary or expedient for effectually vesting the same in the trustees UPON TRUST, that they shall, in such manner as they shall think fit (but as to reversionary property, not until it shall fall into possession, unless it shall appear to them that the trust estate will probably be injured by deferring the sale), sell or call in and convert into money so much of the said property as shall not consist of money or of investments of a nature hereinbefore authorized: AND SHALL hold the net monies produced by such sale, calling in and conversion, and so much of the said property as shall consist of money or of such investments as aforesaid, and the income thereof respectively upon the trusts (including the trust for investment), and with and subject to the powers and provisions hereinbefore declared and contained concerning the monies to arise from the sale of the said stocks specified in the said first schedule hereto and the investments for the time being representing the same, and the income thereof respectively (*a*); PROVIDED ALWAYS,

ments are an exception to it. *Re Clarke*, 36 Ch. D. 348; see also *Tailby* v. *Official Receiver*, 13 App. Cas. 523; *Re Turcan*, 40 Ch. D. 5; *Re Kelcey*, [1899] 2 Ch. 530. Savings and investments of savings of the wife's separate estate are not within the covenant (*Finlay* v. *Darling*, [1897] 1 Ch. 719; *Re Clutterbuck*, [1905] 1 Ch. 200; *Mackenzie* v. *Allardes*, [1905] A. C. 285).

(*a*) Or "concerning monies forming part of the wife's fund and the investments representing the same and the income thereof respectively, and so that the capital trust premises whereof trusts are now being declared shall

that the trustees shall not, without the consent in writing of the wife, sell any annuity or other estate or interest for or determinable with her life, which may form part of the said property, and shall until the same shall be so sold, pay and apply as income of the wife's fund any such annuity, and the income of any such other estate or interest as aforesaid. AND IT IS HEREBY DECLARED, that the trustees may apportion blended trust funds and decide whether any monies shall be considered income or capital for the purposes of these presents [and also the value of any property whereof for any of the purposes of these presents it shall be necessary or desirable to ascertain the value], and may settle and determine all matters as to which any doubt, difficulty, or question may arise in the course of the execution of the trusts or powers of these presents or incidentally thereto; and every such determination whether made upon a question formally raised, or implied in any of the acts or proceedings of the trustees, and although such determination may not be in accordance with the strict rules of law, shall conclusively bind all persons interested under these presents, and generally the trustees may act in relation to the trust premises as effectually as if they were the absolute owners of the same without being responsible for loss occasioned thereby (*a*). AND IT IS HEREBY AGREED, that the power of appointing a new trustee or new trustees of these presents shall be exerciseable by the husband and the wife during their joint lives and by the survivor of them during his or her life; AND that (in addition to

Power for trustees to settle questions.

Power of appointing new trustees;

—and additional indemnities to trustees (*b*).

become an accretion to the wife's fund and for all purposes be blended with and follow the destination of the same."

(*a*) A more precise and formal power to apportion blended trust funds will be found *infra*, p. 518. See also the power in a will, *infra*, pp. 606, 607.

(*b*) See note (*c*), on p. 472, *supra*.

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the ordinary powers, indemnities, and right to reimbursement by law given to trustees), the trustees [may receive and give effectual receipts for monies paid or stocks, funds, shares or securities transferred to them in anticipation of the regular time for payment or transfer thereof pursuant to these presents (*a*) and] may lend on the security of, or purchase, or acquire any hereditaments or property with any title which they shall in their absolute discretion think fit to accept, although the same may be less than or inferior to the title which a purchaser in the absence of a special contract is entitled to require (*b*), and may [lend money in conjunction with any other person or persons by way of contributory loan (*c*), and allow the security for the same to be taken in the name or names of such person or persons jointly with the trustees or any of them, or exclusively or otherwise, and may accept any security subject to prior incumbrances (*d*), and] agree that money lent shall not be called in for a fixed term not exceeding five years, and may also pending or whilst in search of an investment of any description deposit trust money at a bank at interest or otherwise [and also may allow securities and documents belonging to the trust to be placed and remain in their joint names or on their joint behalf in the custody of any banker or solicitor or other agent without retaining by means of keys

(*a*) This is inserted because since the Finance Act, 1894, anticipatory payments and transfers have become more usual. But it is probably not necessary (*Anson* v. *Potter*, 13 Ch. D. 141).

(*b*) It seems doubtful whether the provision on this subject in the Trustee Act, 1893 (App. XVI., *infra*), can be regarded as sufficient for the proper protection of the trustees.

(*c*) In the absence of express power, such a loan would be a breach of trust. *Webb* v. *Jonas*, 39 Ch. D. 660; *Re Dive*, [1909] 1 Ch. 328.

(*d*) As to advances on second mortgage, see *Sheffield, &c. Society* v. *Aizlewood*, 44 Ch. D. 412; *Portsea, &c. Society* v. *Barclay*, [1895] 2 Ch. 298; as to an unauthorised mortgage for a term, *Vickery* v. *Evans*, 33 Beavan, 376.

or otherwise the exclusive control over the same (*a*)], AND it shall not be obligatory on the trustees, unless requested in writing so to do by some person interested in the trust premises (and then only if they shall consider the request reasonable and compliance therewith desirable), to realize or call in any investment which, or the security for which, shall have become depreciated (*b*), or to see to the settlement of any property of the wife other than what is herein specifically mentioned (*c*), and no act or omission in any such respect shall be chargeable as a breach of trust; AND the trustees shall not under any circumstances be bound to act personally, but may, instead of acting personally, employ at the expense of the trust property any professional or business person, or other agent to transact any business, receive, pay, or deliver any money or securities, or do anything in relation to the trust property without being answerable for loss arising thereby; AND every trustee of these presents acting in relation to the trust property in any professional

Power to employ agents.

Power for professional trustee to charge for business (*d*).

(*a*) See *Field* v. *Field*, [1894] 1 Ch. 425; and *Re De Pothonier*, [1900] 2 Ch. 529, as to negotiable securities, and *Re Sisson's Settlement*, [1903] 1 Ch. 262, as to title-deeds and non-negotiable securities.

(*b*) This seems desirable. See *Re Medland*, 41 Ch. D. 477; *Re Johnson*, W. N. 1886, p. 72; *Re Chapman*, [1896] 2 Ch. 763. But see the Trustee Act, 1893, Amendment Act, 1894 (App. XVII., *infra*), s. 4.

(*c*) This provision is proper where there is a covenant for settlement of after-acquired property, in order to protect the trustees from possible liability, though a trustee would probably not be liable for a simple omission to make inquiry when he had no information suggesting that any property had become subject to the covenant. See remarks of L. J. Turner in *Ex parte Geaves*, 8 De Gex, M. & G. 291, 309, and of Jessel, M. R., in *Re Forest of Dean Coal Mining Co.*, 10 Ch. D. 450, 453, and *Youde* v. *Cloud*, L. R. 18 Eq. 634; *Phipps* v. *Lovegrove*, L. R. 16 Eq. 80; *Hallows* v. *Lloyd*, 39 Ch. D. 686.

(*d*) If one of the trustees is himself a solicitor, it will be prudent to obtain special instructions before inserting this clause. See *Re*

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Devolution of powers of trustees.

or business capacity shall in respect of acts so done (and without regard to the question whether they strictly belong to such profession or business, or are such as a trustee could do personally) be entitled to charge and be remunerated out of the trust property as a stranger; AND IT IS HEREBY DECLARED that all the trusts, powers and authorities, and indemnities hereby vested in or given to or provided for the trustees shall respectively devolve upon and be exerciseable by and available for the protection of the [survivors and] survivor of them and the executors or administrators of such survivor and other the trustees or trustee for the time being of these presents (*a*). IN WITNESS, &c.

THE FIRST SCHEDULE above referred to.

THE SECOND SCHEDULE above referred to.

CXIX.

PRECEDENT CXIX.

ON MARRIAGE, TRANSFER OF MORTGAGE TO BE SETTLED.

ASSIGNMENT *to* TRUSTEES, *in contemplation of* MARRIAGE, *and upon trusts to be declared by a* SETTLEMENT *of* EVEN DATE, *of a* SUM *of money secured upon* MORTGAGE.

Parties.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*intended husband*], of the first part, B., of, &c. [*intended wife*], of the second part, and C., of, &c., D., of, &c., and

Chapple, 27 Ch. D. 585, 587. As to its construction, see *Clarkson* v. *Robinson*, [1900] 2 Ch. 722; *Re Chalinder and Herington*, [1907] 1 Ch. 58. It will not preclude the *cestuis que trust* from having the charges investigated. *Re Fish*, [1893] 2 Ch. 413; *Re Chalinder and Herington*, *ubi supra*.

(*a*) See sect. 22 of the Trustee Act, 1893, App. XVI., *infra*, which does not extend to the executors or administrators of the survivor. But the extension is in accordance with ordinary practice.

PRECEDENT CXIX.

ON MARRIAGE, TRANSFER OF MORTGAGE TO BE SETTLED.

E., of, &c. [*trustees*] (hereinafter referred to as the trustees), of the third part. WHEREAS, by an indenture dated the —— day of ——, and expressed to be made between X. [*the mortgagor*], of the one part, and the said A., of the other part, in consideration of £—— to the said X. paid by the said A., the said X. granted unto the said A., his heirs and assigns, divers messuages, farms, lands, tenements, and hereditaments, situate in the parish of ——, in the county of ——, known as the —— Estate, and in the indenture now in recital or the schedule thereto particularly described, to hold the same unto and to the use of the said A., his heirs and assigns, subject to a proviso for redemption on payment by the said X., his heirs, executors, administrators, or assigns, to the said A., his executors, administrators, or assigns, on the —— day of —— then next, of the sum of £——, with interest for the same in the meantime at the rate of £ – per cent. per annum. AND WHEREAS the said sum of £ ——, with interest thereon from the —– day of —— last, is owing to the said A. on the security of the hereinbefore recited indenture. AND WHEREAS a marriage is intended to be solemnized between the said A. and B. NOW THIS INDENTURE WITNESSETH, that, in consideration of the said intended marriage, and in pursuance of an agreement entered into on the treaty for the same, The said A., as MORTGAGEE and AS SETTLOR (*a*) and with the approbation of the said B., doth hereby assign unto the trustees, their executors, administrators, and assigns, ALL THAT the said principal sum of £—— so owing to the said A., on the security of the hereinbefore recited indenture as aforesaid, and all interest due and to become due for the same, and the benefit of all securities for the same (*b*), TO HOLD the said premises unto the trustees, their executors, adminis-

Recital of mortgage.

That principal sum and interest remain owing.

Of intended marriage.

Witnesseth.

Consideration.

Assignment.

Of mortgage debt and interest.

Habendum.

(*a*) As to the effect of these words, see the Conv. Act, 1881 (App. IV., *infra*), s. 7 (1) (F) and (E).

(*b*) See p. 354, n. (*a*), *supra*.

PRECEDENT CXIX.

ON MARRIAGE, TRANSFER OF MORTGAGE TO BE SETTLED.

trators, and assigns, IN TRUST for the said A., his executors, and administrators, until the said intended marriage, AND AFTER the solemnization thereof, UPON SUCH TRUSTS as are or shall be declared concerning the same respectively, by an indenture already engrossed, intended to bear even date with these presents, and to be made between the same persons as are parties to these presents and in the same order [*or if the case be otherwise* "between, &c.," *naming the parties in the usual way*]. AND THIS INDENTURE ALSO WITNESSETH, that, for the consideration aforesaid, and in further pursuance of the said agreement, The said A. as MORTGAGEE doth hereby grant unto the trustees, their heirs and assigns, ALL THE hereditaments and premises in the hereinbefore recited indenture comprised or expressed to be thereby granted, or which now by any means are vested in the said A., subject to redemption under the same indenture, TO HOLD the said premises UNTO and TO THE USE of the trustees, their heirs and assigns, SUBJECT to the equity of redemption subsisting therein under the said indenture of the —— day of —— on payment to the trustees, or the survivors or survivor of them or the executors or administrators of such survivor, their or his assigns, of the said sum of £——, and the interest due and to grow due thereon. AND IT IS HEREBY AGREED that the power of appointing a new trustee or new trustees of these presents shall be exercisable by the said A. and B. during their joint lives, and by the survivor of them during his or her life (*a*). IN WITNESS, &c.

To trustees in trust for assignor till the marriage.

And after on trusts declared by deed of even date.

Witnesseth.

Grant of mortgaged hereditaments to trustees.

Habendum.

To trustees in fee subject to subsisting equity of redemption.

Power to appoint new trustees.

(*a*) As to dispensing with the trustees' receipt clause, see *supra*, p. 472, n. (*c*), and the Acts there referred to.

CXX.

SETTLEMENT *on* MARRIAGE *of stocks and securities belonging to the* WIFE, *giving the* HUSBAND *a* LIFE INTEREST DETERMINABLE *on bankruptcy, assignment, &c.* POWER *for the* WIFE *in certain events to make a* SETTLEMENT *on a* FUTURE MARRIAGE.

PRECEDENT CXX. — ON MARRIAGE, OF WIFE'S PROPERTY, GIVING HUSBAND DETERMINABLE LIFE INTEREST.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*intended husband*], of the first part, B., of, &c. [*intended wife*], of the second part, and C., of, &c., D., of, &c., and E., of, &c. [*trustees*] (hereinafter called the trustees), of the third part. WHEREAS a marriage is intended to be solemnized between the said A. (hereinafter called the husband) and the said B. (hereinafter called the wife). AND WHEREAS, in pursuance of an agreement entered into on the treaty for the same, the wife, with the approbation of the husband, has transferred, assigned, or delivered, into the names of, or unto, the trustees, the several stocks, funds, shares, and securities, belonging to her, specified in the schedule hereto, to be held, &c. [*ut supra*, p. 474] (*a*). NOW THIS INDENTURE WITNESSETH, that, in further pursuance of the aforesaid agreement, and in consideration of the said intended marriage, IT IS HEREBY AGREED, that the trustees, from and after the solemnization of the said intended marriage, shall either permit all or any part of any of the several stocks, funds, shares, and securities specified in the schedule hereto, to remain unaltered, or shall with the respective consents of

Parties.

Recital of intended marriage;

—of transfer of stock and securities.

Witnesseth.

(*a*) It is proper, when possible, to frame a settlement in this form, and to transfer the funds to the trustees before or on the execution of the settlement. Where money lent on mortgage is settled, the assignment of the mortgage debt should be by a separate instrument; for, if the assignment be made in the settlement itself, it would, on a reconveyance, become part of the title to the mortgaged estate. For a form of transfer for this purpose, see Precedent CXIX., *supra*.

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the husband, until the failure or determination of the trust hereinafter declared in his favour of the income of the said trust premises, and of the wife, during her life, and after such failure or determination, and the death of the wife, at the discretion of the trustees, sell, call in, and convert into money, all or any, or any part of the same stocks, funds, shares, and securities, and shall invest the monies produced thereby [*remainder of trusts as to investments, and varying investment, supra*, pp. 476, 477]; AND SHALL pay the income of the said scheduled stocks, funds, shares, and securities, and of the monies and investments for the time being representing the same to the husband, until he shall die or [become bankrupt, or shall assign, charge, or incumber the said income, or (*a*)] do, or suffer something, whereby the same or some part thereof would, [through his act or default, or by operation or process of law, or otherwise (*a*)] if belonging absolutely to him, become payable to or vested in some other person or persons [or cease to be payable to himself (*b*)]; AND after the failure or determination of the trust lastly hereinbefore declared, if the wife shall be then living, shall pay the said income to the wife during her life, but so that during her said intended coverture, such income shall be and remain her separate property without power of anticipation; AND after the failure or determination of the trust hereinbefore declared in favour of the husband, and the death of the wife, shall hold the said trust premises and the income thereof, IN TRUST [*for the issue and children of the marriage, supra*, pp. 469, 470, *adding after the power of appointment to the survivor*, "except that in the event of the husband surviving the wife, and the determination in his lifetime of the trust hereinbefore declared in his favour, the power

Declaration of trust.

For the wife till the marriage.

Power to vary investments.

Trusts for husband until bankruptcy or alienation;

—for wife for life;

—for the issue and children of the marriage.

(*a*) It is thought that the words in square brackets may probably be omitted with safety.

(*b*) See *infra*, p. 533, n. (*a*).

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lastly hereinbefore contained shall not be exerciseable by him after such determination (*a*)." *Hotchpot clause, ut supra*, pp. 470, 478.] PROVIDED ALWAYS that the trustees may after the death of the wife and the determination of the trust hereinbefore declared in favour of the husband or previously thereto with the respective consents in writing of the wife during her life, and of the husband until the determination of the said trust in his favour, raise [*remainder of power of advancement, ut supra*, p. 470; *trusts in default, or on failure of children, ut supra*, pp. 471, 472, *except that* "after the determination of the trust hereinbefore declared in favour of the husband" *must be substituted for* "after the death of the husband"]. PROVIDED ALWAYS, and it is hereby agreed, that, if the wife shall survive the husband (*b*), she may, after his death, and whether she shall be covert or sole, by

Power of advancement.

Power for wife in certain events to make a settlement on a future marriage.

(*a*) This qualification of the survivor's power may be omitted, if desired, but in that case it would be proper to insert the following words immediately before the words "shall hold the said trust premises."

"If the said trust in favour of the husband shall determine in his lifetime shall during the remainder of his life pay and apply the income of the said trust premises in the manner in which the same income would for the time being be payable or applicable if he were then dead. AND after the death of the survivor of them the husband and the wife shall hold, &c."

And the power of advancement would be in the ordinary form, as indeed it sometimes is even in a settlement containing the qualification above referred to. Compare Precedent CXXXII., *infra*, in which the husband takes a contingent determinable and protected life interest.

(*b*) Compare the form, p. 547, *infra*, where there are two funds, one settled by the husband and the other by the wife, and the power is given to the survivor. And see as to the extent to which such a power can be dealt with on divorce, *Hodgson Roberts* v. *Hodgson Roberts*, [1906] P. 142.

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deed, with or without power of revocation and new appointment, or by will or codicil, appoint, that the income of (*a*) any part or parts not exceeding altogether one equal moiety of the said trust premises, shall, after her death, be paid to any person whom she may marry after the death of the husband for the life of such person, or any less period, with or without restriction. AND may, by the same or any other deed, with or without power of revocation and new appointment, or by will or codicil, appoint, that the capital of (*b*) any part or parts not exceeding altogether one equal moiety of the said trust premises (but subject to the interest (if any) of any such person as aforesaid in the income thereof under any appointment by the wife for his benefit), shall, after her death, be held in trust for all or any of the issue of any such future marriage of the wife, in such manner and form in every respect as the wife shall think proper (*c*).

Provision that issue of the

PROVIDED ALWAYS, that the portion of the said trust pre-

(*a*) It is not absolutely necessary to specify the proportion, but if no proportion is specified, then the words given in note (*a*) on p. 493 should be introduced into the next succeeding clause, as otherwise the whole income might be appointed to an after-taken husband, which would seldom be intended. The following is an alternative form:—

"any part or parts of the said trust premises, not exceeding in the several events hereinafter mentioned the several proportions hereinafter respectively specified (that is to say), if there shall not be more than one child of the said intended marriage who being a son shall attain the age of 21 years, or being a daughter shall attain that age or marry, four equal fifth parts; if there shall be two such children and no more, three equal fifth parts; and if there shall be three or more such children two equal fifth parts, shall after her death, &c."

(*b*) See preceding note.

(*c*) Compare the form, *supra*, pp. 469, 470, and note (*c*) on p. 469.

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mises (*a*) to which the issue of any subsequent marriage or marriages of the wife shall collectively become entitled under every or any such appointment as aforesaid, shall not bear a greater proportion to the residue of the said trust premises than the number of the children of any such subsequent marriage or marriages as aforesaid, who being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters, shall attain that age or marry, shall bear to the number of the children of the now intended marriage, who being a son or sons, shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry. PROVIDED ALWAYS, that any such appointment as last aforesaid may be made by the wife, while it shall be uncertain whether or to what extent the same will be capable of taking effect, and if so made, shall take effect according to the event (*b*). PROVIDED ALSO that, subject and without prejudice to every or any such appointment, the trust premises of which any such appointment shall be made, shall

present marriage shall not take less in proportion than issue of a future marriage.

Appointments in anticipation to take effect according to the event.

Provision that subject to preceding

(*a*) If no proportion is specified, insert here the words "to the income of which any such after-taken husband as aforesaid, or to the capital of which." It should be observed that the insertion will not be inappropriate, even though a proportion be specified.

(*b*) In the case mentioned in the last preceding note, or if the words there given are inserted, omit the word "last," and it may be better to introduce after this clause the following: "PROVIDED ALWAYS, nevertheless, that for the purpose of determining the amount of the income available for the benefit of any such after-taken husband as aforesaid, by virtue of any appointment by the wife under the power in that behalf hereinbefore contained, it shall be assumed that every or any child of any marriage of the wife who at her death shall not have acquired a vested interest, will ultimately acquire a vested interest, and such income shall not suffer any increase or diminution in consequence of any such child afterwards failing to acquire a vested interest."

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power the settlement shall remain in force.

remain and be held upon, and subject to such of the trusts and provisions herein declared and contained concerning the same as shall be subsisting or capable of taking effect. [*Powers to apportion blended funds and settle questions and to appoint new trustees, and additional indemnities, &c., ut supra*, pp. 483–486, *so far as required. Declaration as to devolution of trustees' powers, supra*, p. 486.] IN WITNESS, &c.

THE SCHEDULE above referred to.

CXXI.

PRECEDENT CXXI.

APPOINTMENT BY INDORSEMENT ON SETTLEMENT OF PART OF SETTLED FUND.

APPOINTMENT *by indorsement on the settlement of part of* FUND SETTLED *on the* APPOINTOR'S MARRIAGE. VARIATIONS *where the* LIFE INTEREST *is* SURRENDERED.

Recital of appointor's marriage; —death of his wife; —that appointee is a child of the marriage.

TO ALL TO WHOM THESE PRESENTS shall come, the within-named A. B. [*appointor*], sends greeting. WHEREAS shortly after the execution of the within-written indenture, a marriage was solemnized between the said A. B. and C. D. afterwards C. B. his wife. AND WHEREAS the said C. B. is dead. AND WHEREAS E. B. is a child of the said marriage. NOW THESE PRESENTS WITNESS, that in exercise of the power (*a*) for this purpose to the survivor of them the said A. B. and C. B. given by the within-written indenture [and of every or any other power enabling him], HE, the said A. B., doth hereby irrevocably appoint, THAT one equal third part of the several stocks, funds, shares, and securities, now subject to the trusts of the same indenture (*b*), shall, on the

Witnesseth.

Appointment —subject to appointor's life interest.

(*a*) See as to the execution of powers the notes to Precedent VI., *supra*, p. 136.

(*b*) Or, if a particular sum of stock be appointed, and the life interest of the appointor be surrendered:—

"All that sum of £—— Two-and-a-half per Cent. Con-

execution of these presents, subject to the life interest of the said A. B. in the income thereof and to the power in the same indenture contained of varying investments, belong to and be absolutely vested in the said E. B., and be held IN TRUST for the said E. B., her executors, administrators, and assigns (*a*). IN WITNESS, &c.

PRECEDENT CXXI.

APPOINTMENT BY INDORSEMENT ON SETTLEMENT OF PART OF SETTLED FUND.

solidated Stock, part of the sum of £—— like stock subject to the trusts of the same indenture and to be treated as being for all purposes of the value of £——."

To child absolutely.

The latter words are added because, according to *Re Kelly's Settlement Trusts*, [1910] 1 Ch. 78, the value of the stock for hotchpot purposes would otherwise have to be ascertained as at the date of the death of the surrenderor, and this, it is assumed, would be contrary to the intention. It might often be preferable in such a case to appoint a sum of cash.

(*a*) The following is a form of surrender of the appointor's life interest, appropriate where a particular sum of stock has been appointed (see the last preceding note), and where the appointee is not under disability:—

"AND THESE PRESENTS ALSO WITNESS, that, in consideration of the said intended marriage, and in pursuance of an agreement in this behalf entered into upon the treaty for the same, he the said A. B., as settlor, doth hereby surrender unto the said E. B. all the life estate and interest of the said A. B. in the said sum of £——, Two-and-a-half per Cent. Consolidated Stock hereinbefore appointed and the income thereof TO the intent that by means of such surrender and of the appointment hereinbefore contained, the said E. B. may become and be henceforth absolutely entitled in possession to the same sum of Stock."

Surrender of appointor's life interest.

In such a case as this, the liability to succession duty, if any exists, must be taken into consideration, and it may be proper to have the duty commuted and paid at once. The power of the Commissioners to commute is, however, discretionary (Succession Duty Act, 1853, s. 41). As to estate duty, see the Finance (1909-10) Act, 1910, s. 59; and as to succession duty at the rate of £1 per cent. where estate duty has been paid, the Finance Act, 1894, s. 5 (2), and the Finance (1909-10) Act, 1910, s. 58 (2); and

CXXII.

PRECEDENT CXXII.

APPOINTMENT ON MARRIAGE OF PART OF FUNDS SETTLED BY WILL.

APPOINTMENT in contemplation of MARRIAGE of part of the FUNDS, subject to the trusts of a WILL, with PROVISO AVOIDING the APPOINTMENT, if the marriage do not take place within six months.

Recital that under the trusts of a will funds are settled on appointor's children as she shall appoint.

TO ALL TO WHOM THESE PRESENTS shall come, A. B., the wife of C. B., of, &c., sends greeting. WHEREAS, under the will of E. D., the late father of the said A. B., dated the —— day of ——, and proved with a codicil thereto, in the —— Registry, on the —— day of ——, 18 –, divers [monies], stocks, funds, shares, and securities constituting or representing the residuary estate of the said testator stand settled upon trusts under which the income thereof is payable to the said A. B., during her life, for her separate use, without power of anticipation, and subject thereto the said premises, and the income thereof, are directed to be held in trust for all or such one or more exclusively of the others or other of the children of the said A. B., at such age or time, or respective ages or times, and generally in such manner in all respects as the said A. B. shall, notwithstanding coverture, by any deed or deeds, with or without power of revocation and new appointment, appoint. AND WHEREAS the residuary estate of the said testator E. D. now consists of or is represented by the particulars set forth in the schedule hereto and respectively now standing in the names of or vested in —— and —— as the present trustees of the said will. AND WHEREAS F. B. is a daughter of the said A. B., and a marriage is intended to be shortly

That appointee is a child of the

see also the note (*c*) on p. 184, *supra*. It is conceived that an appointment under a special power does not constitute a voluntary disposition within sect. 74 of the last-mentioned Act; but if it be accompanied by a surrender as above, the stamp will have to be adjudicated (sub-s. (2)).

If a proviso, avoiding the appointment, as in the next Precedent, be added, it should extend to avoidance of the whole deed and everything contained in it.

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APPOINTMENT ON MARRIAGE OF PART OF FUNDS SETTLED BY WILL.

solemnized between the said F. B. and G. H., of, &c. NOW THESE PRESENTS WITNESS, that, in exercise of the hereinbefore recited power in the said will contained [and of every or any other power enabling her], SHE, the said A. B., doth by this deed appoint, THAT, subject to the life interest of the said A. B., in the income thereof, one equal moiety of all and singular the [monies], stocks, funds, shares, and securities now or from time to time or at any time constituting or representing the residuary estate of the said testator E. D. (*a*), shall immediately upon the execution of these presents, belong to and be vested in the said F. B., and be held, IN TRUST (*b*), for the said F. B., her executors, administrators, and assigns. PROVIDED ALWAYS that if the said intended marriage shall not be solemnized before the expiration of six calendar months from the date of these presents,

appointor, and is about to be married.

Witnesseth.

Appointment.

That subject to appointor's life interest, one half of the funds shall go to the appointee.

Proviso avoiding the appointment.

(*a*) See p. 498, n. (*b*), *infra*, as to estate duty.

(*b*) If the proposed appointee be an infant, and it is desired that the appointed fund should be settled, the words "for such person or persons, and for such purposes as the said F. B., notwithstanding infancy, shall by deed with or without power of revocation and new appointment appoint, and in default of and subject to such appointment" may be inserted here. This would be a good exercise of the power in the text. See Sugden on Powers, 8th ed. p. 863, and also *Stark* v. *Dakyns*, L. R. 10 Ch. 35, and *Re Meredith's Trusts*, 3 Ch. D. 757. And it is presumed that the desired settlement might afterwards be made by the infant in exercise of the power so limited. See *Re D'Angibau*, 15 Ch. D. 228; *Pouey* v. *Hordern*, [1900] 1 Ch. 492. The contrary was decided in an Irish case, *Re Armit*, 5 Ir. R. Eq. 352, which being (it is submitted) inconsistent with *Re D'Angibau*, should be regarded as of no authority. If, however, the ultimate trust was in favour of some object other than the infant, the suggested settlement would unquestionably be good, even according to the law as stated in *Re Armit*. And of course the settlement should be confirmed under any circumstances as soon as the infant comes of age. See *Greenhill* v. *North British and Mercantile Insurance Company*, [1893] 3 Ch. 474; *Re Hodson*, [1894] 2 Ch. 421; *Viditz* v. *O'Hagan*, [1900] 2 Ch. 87.

PRECEDENT CXXII.

APPOINTMENT ON MARRIAGE OF PART OF FUNDS SETTLED BY WILL.

the appointment hereinbefore contained shall, at the expiration of such six months, become void. IN WITNESS, &c.

THE SCHEDULE above referred to.

CXXIII.

PRECEDENT CXXIII.

APPOINTMENT UNDER A SPECIAL POWER OF THE ENTIRE FUND.

APPOINTMENT *under a* POWER *in an ordinary* PERSONALTY SETTLEMENT *of the* ENTIRE FUND. VERY SHORT FORM.

Appointment by husband and wife;

—that after death of survivor trustees shall raise and pay certain sums to sons and a daughter;

KNOW ALL MEN BY THESE PRESENTS that we, A. B., of, &c. [*husband*], and C. B., his wife, in exercise of the power to us for this purpose given by the settlement made on our marriage (*a*), and of every other power us enabling, do hereby appoint that, after the death of the survivor of us, the trustees or trustee for the time being of the said settlement shall raise out of the trust funds subject to the trusts of the same settlement, and pay to our children next hereinafter named, the several sums hereinafter mentioned respectively with interest for the same respectively from the death of the survivor of us at the rate of £3 per cent. per annum, and without any deduction in respect of the estate duty or otherwise (*b*) (that is to say), to our elder son M. B., £7,500,

(*a*) It is assumed there was but one.

(*b*) It would suffice, perhaps, to describe the sums as net or clear sums (*Re Saunders*, [1898] 1 Ch. 17; *Re Coxwell's Trusts*, [1910] 1 Ch. 63), but the words in the text are preferable. In the absence of some such words the estate duty would be payable rateably by the specific and residuary appointees. See *Re Countess of Orford*, [1896] 1 Ch. 257; *Re Meyrick*, [1897] 1 Ch. 99; *Re Chisholm*, [1902] 1 Ch. 457. And cp. *Wade* v. *Wade*, [1898] 2 Ch. 276; *Re Parker-Jervis*, *ib.* 643, where a contract for exemption from the duty was implied. The words "but subject to the deduction thereout respectively of proper rateable parts of the estate duty becoming payable in respect of the said trust funds"

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APPOINTMENT UNDER A SPECIAL POWER OF THE ENTIRE FUND.

to our son N. B., £5,000, and to our daughter, P. X., £4,000 (*a*), AND shall hold the residue of the said trust funds and the income thereof, IN TRUST for our daughter, L. B. and our other daughters or daughter except the said P. X. who shall attain the age of twenty-one years or marry, and if more than one in equal shares (*b*): AND FURTHER that the power of advancement [and powers and provisions for the maintenance and education of infant children, and for the accumulation and destination of surplus income of the shares of infant children] in the said settlement contained shall extend and apply to the sums and shares hereby appointed as nearly as may be: PROVIDED ALWAYS, and we reserve to ourselves power by deed [and to the survivor of us power by deed or will] to revoke wholly or partially the appointment hereby made. IN WITNESS, &c. (*d*).

—and hold residue for other daughters as a class.

Power of advancement and other powers of the settlement to apply (*c*).

Power of revocation.

may be substituted for the reference to estate duty in the text, if desired; but the cases cited *supra* show that they are unnecessary where the exonerating words in the text are omitted. See the notes on this subject, pp. 592, 597, *infra*.

(*a*) These children are assumed to be of age.

(*b*) It is assumed that L. B. has attained 21, and consequently that no ultimate trust is needed. The daughters, except P. X., take as a class (see *Re Featherstone's Trusts*, 22 Ch. D. 111; *Kingsbury* v. *Walter*, [1901] A. C. 187; and cf. *Re Venn*, [1904] 2 Ch. 52), but it would be better not to use this form of trust in a will.

(*c*) It is not clear that this can be done under a power not specially authorising the donees to create such powers. See Dav. Prec. Conv. vol. iii. pt. ii. p. 159, 3rd ed.

(*d*) Notice of the deed should be given to the trustees. As to the stamp, see p. 496, *supra*, n.

CXXIV.

PRECEDENT CXXIV.

DEED OF REVOCATION AND NEW APPOINTMENT UNDER A SPECIAL POWER.

DEED OF REVOCATION *of an* APPOINTMENT *in favour of children, made* UNDER *a* POWER *contained in a* SETTLEMENT *and* NEW APPOINTMENT *with* POWER *of* REVOCATION.

TO ALL TO WHOM THESE PRESENTS shall come, A. B., of ——, widow [*appointor*], sends greeting.

Recital of settlement;

WHEREAS by an indenture dated the —— day of ——, and expressed to be made between [*parties*] (being a settlement made in consideration of the marriage then intended and afterwards solemnized between the said E. B., since deceased and A. B.), it was declared that the trustees or trustee for the time being thereof should, after the solemnization of the said then intended marriage, either permit certain reversionary interests and stocks, funds, shares, and securities, respectively belonging to the said A. B., and duly vested in the then trustees thereof, to remain unaltered, or should vary the investment of the same as therein mentioned, and should pay the income thereof and of the investments for the time being representing the same to the said A. B. during the joint lives of herself and the said E. B., for her separate use, without power of anticipation, and after the death of either of them, to the survivor of them during his or her life, and after the death of such survivor should hold the said trust premises and the income thereof IN TRUST for all or any of the issue of the said then intended marriage with such future or other trusts for their respective benefit, and provisions for their respective advancement (either overreaching the interests prior to the power now in recital or not) or maintenance or education at the discretion of the said trustees or trustee, or of any other persons or person, and generally in such manner as the said E. B. and A. B. should jointly by deed appoint, and in default of and subject to such appointment as the survivor of

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them should by deed, or will, or codicil, appoint, AND in default of and subject to such appointment upon trusts thereby declared for the benefit of the children or child of the said marriage with the usual hotchpot clause and power of advancement. AND in the indenture now in recital were contained (among other powers and provisions) a provision for the settlement upon and subject to corresponding trusts and powers of other and after-acquired property of the said A. B., and also a power for the appointment of new trustees thereof. AND WHEREAS the aforesaid reversionary interests have fallen into possession, and certain monies have become subject to the aforesaid provision in the said indenture of settlement contained for the settlement of other and after-acquired property of the said A. B. AND WHEREAS the trust funds now subject to the trusts of the said indenture of settlement, consist of the stocks, funds, shares, and securities specified in the schedule hereto and respectively standing in the names or under the legal control of —— and ——, the present trustees of the said indenture of settlement. AND WHEREAS the said E. B. died on the —— day of ——, 18—, without having joined with the said A. B. in exercising the joint power of appointment by the said indenture of settlement given to them as aforesaid. AND WHEREAS there was issue of the said marriage six children and no more, namely, three sons, D. B., F. B., and G. B., and three daughters, H. B. (who intermarried with L. M., and is hereinafter referred to as the said H. M.), J. B., and K. B. AND WHEREAS by a deed poll dated the —— day of ——, 19—, and under the hand and seal of the said A. B. in exercise of the aforesaid power given to her by the said indenture of settlement, she appointed that the trustees or trustee for the time being of the same indenture, should,

—of reversionary interests having fallen in, and after-acquired property having accrued;

—of present state of the funds (*a*);

—of death of husband without exercising powers;

—of issue;

—of previous appointment revocable except as regards eldest son;

(*a*) It is often more convenient and logical to introduce this recital immediately before the recital of desire to appoint.

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after the death of the said A. B., raise out of the trust premises and pay to the said D. B., his executors, administrators, or assigns, the sum of £2,000 with interest for the same at the rate of £3 per cent. per annum from the death of the said A. B. [and without any deduction in respect of the estate duty or otherwise (*a*)], and subject thereto should hold the said trust premises and the income thereof upon trusts therein expressed for the benefit of her other children. AND by the deed poll now in recital the said A. B. declared that it should be lawful for her at any time thereafter by deed or will to revoke all or any of the appointments thereinbefore contained, other than and except so far as regarded the appointment to or in favour of the said D. B. of the said sum of £2,000 and interest. AND WHEREAS the said H. M. died in the month of ——, 19—, leaving issue, and the said G. B. is of unsound mind, but has not been found so by inquisition, and the said F. B. and J. B. and K. B. are respectively infants. AND WHEREAS the said A. B. is desirous of revoking the appointment or appointments made by the said deed poll for the benefit of her children other than the said D. B., and of making such new appointment or appointments as hereinafter expressed. NOW THESE PRESENTS WITNESS that in exercise of the power by the said deed poll for this purpose reserved to the said A. B. as aforesaid, and of every other power enabling her, she the said A. B. doth hereby revoke the appointment or appointments by the said deed poll expressed to be made other than and except so far as regards the appointment to or in favour of the said D. B. of the said sum of £2,000 and interest. AND THESE PRESENTS ALSO WITNESS that in exercise of the power by the said indenture of settlement for this purpose given to the said A. B. as the survivor of herself and the said E. B., and of every other power enabling her, she the said A. B. doth hereby

—of death of a daughter leaving issue; of lunacy of a son, and of infancy of other children;

—of desire to revoke an appointment.

Witnesseth.

Revocation except of appointment to eldest son.

Witnesseth.

Appointment.

(*a*) See p. 498, *supra*, note (*b*).

appoint that the trustees or trustee for the time being of the said indenture of settlement, shall, from and immediately after the death of the said A. B., hold such and such parts as after raising thereout and out of the income thereof respectively, and paying to the said D. B., his executors, administrators, or assigns, the said sum of £2,000 and interest by the said deed poll appointed to him or in his favour as aforesaid [and the estate duty in respect thereof], shall remain of the stocks, funds, shares, and securities specified in the schedule hereto, or any trust funds which may be substituted for the same and of all other trust funds and property which by virtue of the aforesaid provision in the said indenture of settlement contained for the settlement of other and after-acquired property of the said A. B., or otherwise howsoever, are or is or shall be or become subject to the trusts of the said indenture of settlement (hereinafter collectively referred to as the remainder of the said trust funds), and the income thereof UPON THE TRUSTS, and with and subject to the powers and provisions hereinafter declared and contained concerning the same respectively (that is to say), UPON TRUST that the said trustees or trustee, shall, out of the income of the remainder of the said trust funds, pay or apply an annuity of £—— per annum [clear of estate duty (*a*) and all other deductions] for or towards the maintenance and support of the said G. B. during his life, such annuity to commence from the death of the said A. B., AND subject to the payment of such annuity shall hold one equal third part of the remainder of the said trust funds and the income thereof IN TRUST for all the children or any the child of the said H. M. (*b*), who being sons or a son shall attain the age of twenty-one years, or being

Of remainder of funds.

To pay an annuity for benefit of lunatic son;

—and subject thereto as to one-third for children of deceased daughter;

(*a*) See p. 498, *supra*, note (*b*).

(*b*) Observe that, H. M. being dead, no question of remoteness arises.

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daughters or a daughter shall attain that age or marry, and if more than one in equal shares, AND in default of any such child UPON THE TRUSTS hereinafter declared concerning the other two equal third parts of the remainder of the said trust funds and the income thereof respectively, AND shall hold the other two equal third parts of the remainder of the said trust funds and the income thereof, IN TRUST for the said F. B., J. B., and K. B., and their respective executors, administrators, and assigns in equal shares. PROVIDED ALWAYS that if any of them the said F. B., J. B., and K. B., shall die, being male, under the age of twenty-one years, or being female, under that age and without having been married, the share or shares (accruing as well as original), of him, her, or them, so dying, shall accrue to the others or other of them, and the said D. B. and their respective executors, administrators, and assigns, and if more than one in equal shares. PROVIDED ALWAYS that the aforesaid power of advancement in the said indenture of settlement contained, shall extend and apply to the shares hereby appointed as nearly as may be. [PROVIDED ALSO that accumulations arising during the minority or minority and discoverture of any infant appointee, and not applied under the statutory power in that behalf, shall form an accretion to the capital of the share of such appointee so as to be blended and devolve along with the same (*b*).] [PROVIDED ALSO that the receipt of any female appointee marrying under the age of twenty-one years for the income and accumulations of any share or shares to which she shall be, for the time being, entitled in possession, shall be a sufficient discharge for the same notwithstanding her infancy (*c*).] PROVIDED ALWAYS that the said trustees or trustee may appropriate to answer, by

—and as to remaining two-thirds for other children.

Accruer clause.

Advancement clause in settlement to apply (*a*).

Accumulations during minorities to be capital.

Receipt of married female infant to be a discharge for income and accumulations.

Power to appropriate fund to answer annuity.

(*a*) See note (*c*), p. 499, *supra*.
(*b*) See *supra*, p. 62.
(*c*) See note (*a*), p. 470, *supra*.

means of the income thereof, the said annuity of £—— per annum such parts of the remainder of the said trust funds as they or he shall think sufficient for that purpose, and in the event of such appropriation being made the income of the appropriated parts shall be exclusively applicable for payment of the said annuity in entire exoneration of the income of the parts not so appropriated, and in case the income of the appropriated parts shall become insufficient to satisfy the said annuity, the same shall abate accordingly. PROVIDED ALWAYS that nothing hereinbefore contained shall prejudice or affect the powers in the said indenture of settlement contained of varying the investment of the said trust funds. PROVIDED ALWAYS that it shall be lawful for the said A. B. by deed, or will, or codicil, to revoke wholly or partially, or to vary, all or any of the appointments hereinbefore contained, and by the same or any other deed, or by will or codicil, to declare pursuant to the power in that behalf in the said indenture of settlement contained any new or other trusts concerning the premises the trusts whereof shall be so revoked. IN WITNESS, &c. (*a*).

PRECEDENT CXXIV.

DEED OF REVOCATION AND NEW APPOINTMENT UNDER A SPECIAL POWER.

Power of varying investments not to be prejudiced.

Power of revocation and new appointment.

THE SCHEDULE above referred to.

CXXV.

SETTLEMENT, *on* MARRIAGE, *of a* REVERSIONARY INTEREST *in Personalty, and a* POLICY *of* ASSURANCE *on the Husband's Life* (*b*). POWER *to* LEND *a portion of the fund to the* HUSBAND.

PRECEDENT CXXV.

ON MARRIAGE, OF REVERSIONARY INTEREST OF WIFE, AND POLICY ON HUSBAND'S LIFE.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*intended husband*], of the first part, B., of, &c. [*in-*

Parties.

(*a*) As to the stamp, see p. 496, *supra*, n.

(*b*) The policy here settled is one effected in the names of the trustees. See the next Precedent for the form of settlement of a policy effected, as is most usual, in the husband's name.

PRECEDENT CXXV.

ON MARRIAGE, OF REVERSIONARY INTEREST OF WIFE, AND POLICY ON HUSBAND'S LIFE.

tended wife], of the second part, and C., of, &c., D., of, &c., and E., of, &c. [*trustees*] (hereinafter called the trustees), of the third part. WHEREAS a marriage is intended to be solemnized between the said A. (hereinafter called the husband), and the said B. (hereinafter called the wife). AND WHEREAS, under an indenture dated the —— day of ——, and expressed to be made between [*parties*] (being a settlement made in consideration of a marriage shortly after solemnized between the said —— and ——, the father and mother of the wife), and by virtue of an appointment (*a*) made in exercise of a power in the said settlement, by a deed poll dated the —— day of this instant month of ——, and under the hands and seals of the said —— and ——, the wife is entitled in reversion expectant on the death of the survivor of the said —— and ——, and subject to their respective life interests therein, and also subject to the power of varying investments contained in the said settlement, absolutely to a —— share, and contingently to other shares or another share in the trust funds subject to the trusts of the said settlement (*b*). AND WHEREAS the said trust funds now consist of or are represented by the monies, stocks, funds, and securities specified in the said schedule hereto, and respectively standing in the names of or otherwise vested in —— and —— as trustees of the said settlement. AND WHEREAS upon the treaty for the said intended marriage, it was agreed that the said absolute and contingent share and shares of the wife in the said trust funds should be settled upon the trusts hereinafter declared of the same. AND WHEREAS, in pursuance of a further agreement entered into on the treaty for the said intended marriage, the husband has

Recital of agreement for marriage.

Recital of the wife's being entitled to a reversionary interest in trust funds;

—of a settlement having been agreed on;

—that the husband has insured his life in the trustees' names.

(*a*) See the previous Precedent and note (*b*), p. 497, *supra*.

(*b*) Or "the stock specified in the schedule hereto and standing in the names of, &c.," and omit the next following recital.

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ON MARRIAGE, OF REVERSIONARY INTEREST OF WIFE, AND POLICY ON HUSBAND'S LIFE.

effected an insurance on his life, in the names of the trustees with the —— Assurance Office, by a policy dated the —— day of ——, numbered ——, in the sum of £——, and under the annual premium of £—— to the intent that the same may be settled upon the trusts hereinafter declared of the same (*a*). Now THIS INDENTURE WITNESSETH, that in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, she, the wife, as SETTLOR with the approbation of the husband (*b*) doth hereby assign unto the trustees, ALL the said absolute and contingent share and shares of the wife in the monies, stocks, funds, and securities now or from time to time or at any time constituting or representing the trust funds subject to the trusts of the said settlement (*c*), TO HOLD the premises UNTO the trustees subject to the life interests therein of the said —— and ——, IN TRUST for the wife, her executors and administrators, until the said intended marriage, and after the solemnization thereof, UPON TRUST, that the trustees shall, as and when the same shall respectively fall into possession, call in and obtain a transfer or payment to themselves, of the said share or shares hereinbefore assigned, and shall either permit any stocks, funds, shares or securities which may be transferred to them in respect, or on account, of the said share or shares hereinbefore assigned [*trusts as to investment, and varying investment, adding in the power to vary*, "call in" *or other appropriate words, and the word* "shall" *before* "lay out" *and after the words* "by such sale" *the words*

Witnesseth.

Assignment by the wife to the trustees of her reversionary share of the trust funds.

Habendum.

Upon trusts, for obtaining transfer of the share, investment, &c.

(*a*) See *infra*, p. 510, n. (*b*).

(*b*) Regard being had to the Married Women's Property Act, 1882 (App. XII., *infra*), the addition of any express confirmation or covenant on the part of the husband would seem to be no longer required.

(*c*) Or "in the stock specified in the said schedule hereto or the investments by which the same may from time to time be represented."

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"and also any monies constituting part of the same share or shares"; *for wife and husband successively during life; for the issue and children of the marriage; hotchpot clause; power of advancement; trusts in default or failure of children, supra*, pp. 468—472. PROVIDED ALWAYS that the trustees (if they shall think fit, and without being accountable in respect of the exercise of this power) may at any time or times during the life of the wife, and after the said premises hereinbefore assigned or any of them shall have fallen into possession, at the request in writing of the wife, raise out of such of the said premises as shall have fallen into possession, or out of the investments representing the same, any sum or sums not exceeding altogether £——, and advance the sum or sums raised by way of loan to the said A. B. at such rate of interest, for such period, and upon such terms, as the trustees in their discretion may think fit, so that the repayment of every or any sum so advanced with interest in the meantime at such rate as may be agreed on be secured by bond or otherwise as may be agreed: AND the trustees shall hold the sum or sums the repayment whereof is to be so secured, and the interest thereof upon the same trusts, and subject to the same powers and provisions, as the corresponding sum or sums advanced, and the income of the investments representing the same would have been subject to if the same had not been so advanced. AND IT IS HEREBY AGREED, that the trustees shall hold the said sum of £—— [*the sum assured by the policy*], and other the monies (if any) to become payable under the said policy of assurance, and the investments for the time being representing the same, UPON THE TRUSTS (including the trust for investment), and subject to the provisions hereinbefore declared and contained concerning the monies to arise by the sale or calling in of any part, or constituting or representing any part, of the said premises hereinbefore assigned, and the investments for the time being representing the same,

Power to lend part of the fund to the husband with ancillary trusts.

Trusts of the policy of assurance on the husband's life, declared by reference to the preceding trusts;

—and the income thereof;

and the income thereof, or as near thereto as circumstances will permit; SAVE AND EXCEPT, that, if there shall be no child of the said intended marriage, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then (without prejudice to the other trusts hereinbefore declared thereof by reference), and after the death of the wife and such default or failure of children as aforesaid, the trustees shall hold the monies and investments, the trusts whereof are now being declared, and the income thereof, or so much thereof respectively as shall not have become vested or been applied under any of the trusts or powers herein contained or implied by statute, IN TRUST for the husband, his executors, administrators, and assigns. AND THE husband doth hereby covenant with the trustees, that, if the said intended marriage shall be solemnized, he the husband will at all times pay the said annual premium of £—— and such other monies (if any) as may become payable for keeping on foot the said policy, on the first day on which the same respectively ought to be paid, and will not do or knowingly suffer any thing whereby the said policy may become void or voidable, or the trustees be hindered from receiving any of the monies assured, or which might become payable under the same: PROVIDED ALWAYS, that the trustees may, if they shall think fit, apply any part of the annual income, or, if that be insufficient, then any part of the capital of the said trust premises, in payment of the said annual premium or other the monies (if any) which may become payable for keeping on foot the said policy: PROVIDED NEVERTHELESS, that any neglect by the trustees so to apply any part of the said annual income or capital, or to enforce the covenants hereinbefore contained on the part of the husband, shall not be considered a breach of trust, and that the trustees shall not be in anywise responsible for such neglect, nor for the said policy becoming void by

Covenant by the husband to keep on foot the policy of assurance.

Power for trustees to pay premiums, &c., out of the income or capital of the trust funds.

Trustees not to be chargeable with a breach of trust if the policy be not kept on foot.

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any means whatsoever (*a*). [*Power to apportion blended funds and settle questions. Power to appoint new trustees and additional indemnities, &c., mutatis mutandis, and so far as required, ut supra,* pp. 483—486, *adding after the word* "depreciated" *the words* "or any monies advanced to the husband under the power in that behalf hereinbefore contained." *Declaration as to devolution of powers of trustees, supra,* p. 486.] IN WITNESS, &c.

THE SCHEDULE above referred to.

CXXVI.

PRECEDENT CXXVI.

ON MARRIAGE, OF POLICY.

SETTLEMENT, *on Marriage, of a* POLICY OF ASSURANCE *on the husband's life* (*b*).

Parties.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*intended husband*], of the first part, B., of, &c. [*intended wife*], of the second part, and C., of, &c., D., of, &c., and E., of, &c. [*trustees*] (hereinafter called the trustees), of

Witnesseth.

the third part, WITNESSETH, that, in consideration of a marriage intended to be shortly solemnized between the said A. (hereinafter called the husband), and the said B. (hereinafter called the wife), he the husband AS SETTLOR, with the approbation of the wife, doth hereby

Assignment of policy.

assign unto the trustees ALL THAT [*assignment of policy,*

(*a*) Compare the provisions in the next Precedent.

(*b*) This Precedent is inserted as giving the form which the settlement of a policy assumes, when such policy has been effected in the husband's name. Since, under "The Policies of Assurance Act, 1867," assignees of a policy can sue in their own names, there is no material advantage in having the policy effected in the names of trustees. A form of settlement of a policy in the names of the trustees is given in the last Precedent.

supra, p. 282]. To HOLD the premises UNTO the trustees IN TRUST for the husband, his executors and administrators, until the said intended marriage, and after the solemnization thereof UPON THE trusts hereinafter declared concerning the same. AND IT IS HEREBY AGREED, that, if the said intended marriage shall take place, the trustees shall hold the said premises, UPON trust to obtain payment of and receive all monies assured by, or to become payable under, the said policy, as and when the same shall become payable; AND shall, with the consent in writing of the wife, during her life, and after her death at the discretion of the trustees, invest the monies so to be received in the names [*Remainder of trusts as to investment and varying investment, supra*, pp. 468, 469], AND shall pay the income of the said monies and of the investments for the time being representing the same, to the wife during her life, but so that during her said intended coverture such income shall be and remain her separate property without power of anticipation, AND after her death shall hold the said trust premises and the income thereof IN TRUST [*for the issue and children of the marriage; hotchpot clause and power of advancement, supra*, pp. 469, 470]. AND IT IS HEREBY AGREED, that if there shall be no child of the said intended marriage, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then, subject and without prejudice to the trusts hereinbefore declared, the trustees shall hold the said trust premises and the income thereof, or so much thereof respectively as shall not have become vested or been applied under any of the trusts or powers herein contained or by statute implied from and after the death of the wife, and such default or failure of children as aforesaid, which shall last happen, IN TRUST for the husband, his executors, administrators, and assigns. [*Covenant by husband to keep on foot the policy of assurance, supra*, p. 509.] PROVIDED NEVERTHELESS, that any

PRECEDENT CXXVI.

ON MARRIAGE, OF POLICY.

Habendum.

Trust for husband until marriage;

—after, on trusts after declared.

Declaration of trusts of policy.

Trusts for investment of policy monies;

—for wife for life;

—usual trusts for children, &c.

Trust in default of children for husband absolutely.

Trustees not

PRECEDENT CXXVI.

ON MARRIAGE, OF POLICY.

neglect by the trustees to enforce the covenant hereinbefore contained on the part of the husband, shall not be considered a breach of trust, and that the trustees shall not be in anywise responsible for such neglect, nor for the said policy becoming void by any means whatsoever: AND ALSO that the trustees may, if they shall think fit, upon the request in writing of the husband and the wife during their joint lives, or of the husband, after the death of the wife, sell the said policy either by way of surrender to the office granting the same, or otherwise, and in such case the net proceeds shall be held upon the trusts, and with and subject to the powers and provisions, which would have been applicable thereto if they had been monies assured by the policy so sold (*a*). PROVIDED ALSO that the trustees shall, upon such request in writing as aforesaid, permit any bonus or bonuses which shall be declared in respect of the said policy, to be applied in reduction of the annual premium (*b*). [AND it is hereby declared that the receipt in writing of the trustees for any monies paid to them under the said policy of assurance or otherwise, in pursuance of these presents or the trusts thereof, shall effectually discharge the assurance society, or person or persons paying the same therefrom, and from being concerned to see to the application thereof (*c*).] [*Power to appoint new trustees, and additional indem-*

to be chargeable with a breach of trust if the policy be not kept on foot.

Power for the trustees to sell policy;

—to apply bonuses in reduction of premium.

Receipt clause.

(*a*) Where a settlement does not provide any fund available for payment of the premiums, such a power as that in the text is advantageous, as it enables the trustees to make the most of the policy, if they are deprived, by the husband's incapacity to pay, of any means of keeping the policy on foot. See Davidson's Prec. Conv. 3rd ed. vol. iii. p. 812, n. (*p*).

(*b*) When the rules of the Assurance Office allow bonuses to be applied in this manner, the provision in the text may be inserted with advantage, unless sufficient funds are provided by the settlement for keeping on foot the policy.

(*c*) As to the insertion of this clause, see p. 231, n. (*a*); and as to giving notice of the assignment, see p. 232, n. (*a*).

nities so far as required, ut supra, pp. 483–486. *Declaration as to devolution of trustees' powers, supra*, p. 486.] IN WITNESS, &c.

PRECEDENT CXXVI.

ON MARRIAGE, OF POLICY.

CXXVII.

SETTLEMENT, *on* MARRIAGE, *of* WIFE'S STOCK *for herself and* HUSBAND, *without Provision for Children.*

PRECEDENT CXXVII.

ON MARRIAGE, OF WIFE'S STOCK, WITHOUT PROVISION FOR CHILDREN.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*intended husband*], of the first part, B., of, &c. [*intended wife*], of the second part, and C., of, &c., D., of, &c., and E., of, &c. [*trustees*] (hereinafter called the trustees), of the third part, WITNESSETH, &c. [*declaration of trust for the wife till marriage; trusts as to investment; trusts for wife for the joint lives, and for the survivor for life, ut supra*, pp. 468, 469]. AND after the death of such survivor shall hold the said premises, and the income thereof, IN TRUST for such persons and purposes, and in such manner as the wife shall, when discovert by deed, or whether covert or discovert by will or codicil, appoint, AND IN DEFAULT of and subject to any such appointment, UPON THE TRUSTS FOLLOWING (that is to say), if the wife shall survive the husband, then IN TRUST for the wife as her separate property, but so that during her said intended coverture such contingent reversionary interest shall be and remain her separate property without power of anticipation; but if the husband shall survive the wife, then IN TRUST for such persons or person as, under the statutes for the distribution of the effects of intestates, would have become entitled thereto at the death of the wife, if the husband were then dead, and she had died possessed thereof intestate (*a*), such persons, if more than one, to

Parties.

Witnesseth.

Declaration of trust after the death of husband and wife, in favour of the wife.

(*a*) The words "without having been married" (see *supra*, p. 472) are omitted, the intention being not to exclude children should there be any.

PRECEDENT CXXVII.

ON MARRIAGE, OF WIFE'S STOCK, WITHOUT PROVISION FOR CHILDREN.

take as tenants in common, in the shares in which they would have been entitled under the same statutes. [*Power to appoint new trustees, and additional indemnities so far as needed, ut supra*, pp. 483–486. *Declaration as to devolution of powers of trustees, supra*, p. 486.] IN WITNESS, &c.

CXXVIII.

PRECEDENT CXXVIII.

ON MARRIAGE, OF SUM TO BE PAID BY HUSBAND, AND WIFE'S PROPERTY, ISSUE OF MARRIAGE NOT BEING CONTEMPLATED.

SETTLEMENT, *on* MARRIAGE, *of a sum of* MONEY COVENANTED *to be paid by the* HUSBAND, *and of a sum of* STOCK, *some* FURNITURE, *and a* SHARE *of* FARMING STOCK, *belonging to the* WIFE, ISSUE *of the Marriage* NOT *being* CONTEMPLATED.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*intended husband*], of the first part, B., of, &c. [*intended wife*], widow, of the second part, and C., of, &c., D., of, &c., and E., of, &c. [*trustees*] (hereinafter called the trustees), of the third part, WITNESSETH, that in consideration of a marriage intended to be solemnized between the said A. (hereinafter called the husband), and the said B. (hereinafter called the wife), and in pursuance of an agreement entered into on the treaty for the same, HE the husband doth hereby, with the approbation of the wife, covenant with the trustees, that if the said intended marriage shall be solemnized, he the husband, his heirs, executors, or administrators, will, within six calendar months after the solemnization thereof, pay to the trustees the sum of £——, with interest for the same at the rate of £—— per cent. per annum from the solemnization of the said intended marriage (*a*). AND IT

Parties.

Witnesseth.

Covenant by husband to pay a gross sum.

(*a*) It was decided in *Ex parte Bishop*, L. R. 8 Ch. 718, that such a covenant by a husband, who is a trader, does not come within the

Precedent CXXVIII.

On marriage, of sum to be paid by husband, and wife's property, issue of marriage not being contemplated.

IS HEREBY AGREED, that the trustees SHALL, with the consent of the husband and the wife, during their joint lives, and of the survivor of them during his or her life, and after the death of such survivor at the discretion of the trustees, invest the said sum of £——, in their names [*remainder of trusts as to investment, supra*, pp. 468, 469], AND, during the joint lives of the husband and the wife, SHALL pay the income of one equal moiety of the said sum of £——, and of the investments for the time being representing the same, to the husband, and his assigns, AND the income of the other equal moiety of the same premises to the wife for her separate use, without power of anticipation, AND, after the death of either of them, the husband and the wife, SHALL HOLD the said trust premises and the income thereof, UPON THE TRUSTS following, that is to say, IF the wife shall die in the lifetime of the husband, IN TRUST for the husband, his executors, administrators, and assigns; BUT if the husband shall die in the lifetime of the wife, IN TRUST, during the life of the wife, to pay the said income to her, but so that during her said intended coverture such reversionary life interest shall be and remain her separate property without power of anticipation; AND from and after her death, IN TRUST for such persons for such purposes and in such

Trust for investment.

And to pay income of one half to the husband.

Income of the other half to the wife for her separate use.

If wife die first, the whole to be in trust for the husband.

If husband die first, the whole income to be paid to the wife for life, and the capital to be in trust for the husband's appointees.

meaning of the 91st section of "The Bankruptcy Act, 1869," as "a covenant or contract for settlement of money or property wherein the husband had not, at the date of his marriage, any estate or interest," and therefore was not, under that section and sect. 125, rendered void as against the husband's trustees on his bankruptcy or liquidation under that Act. This decision appears to be no less applicable to the corresponding sect. (47) of the Bankruptcy Act, 1883, which, however, is not confined to traders. Under sect. 30, a discharge in bankruptcy appears to release the husband himself from further liability under such a covenant. See sect. 48 as to avoiding payments within three months before bankruptcy.

If payment within the appointed time is not intended to be enforced, the trustees must be protected from liability by such a proviso as that at p. 521, *infra*.

PRECEDENT CXXVIII.

ON MARRIAGE, OF SUM TO BE PAID BY HUSBAND, AND WIFE'S PROPERTY, ISSUE OF MARRIAGE NOT BEING CONTEMPLATED.

manner as the husband shall, by deed or will or codicil, appoint; AND IN DEFAULT of and subject to any such appointment, IN TRUST for such persons or person as, under the statutes for the distribution of the effects of intestates, would have become entitled thereto, at the death of the husband, had he died possessed thereof intestate, and without having been married to the wife, such persons, if more than one, to take as tenants in common, in the shares in which they would have been entitled under the same statutes.

And in default of appointment, for his next of kin.

AND THIS INDENTURE ALSO WITNESSETH, that, in consideration of the said intended marriage, and in pursuance of an agreement entered into on the treaty for the same, SHE the wife, AS SETTLOR, with the approbation of the husband (*a*), doth hereby assign unto the trustees, FIRST, all that sum of Two and a half per cent. Consolidated Stock now standing in the name of, and belonging to the wife: SECONDLY, all the furniture, plate, and plated articles, ornaments, china, linen, glass, books, pictures, and household effects, which now are in or about the house in which she, the wife, is now residing at —— (all which last-mentioned premises are hereinafter referred to as "furniture and household effects"): AND THIRDLY, all the share, estate, and interest of her, the wife, of and in the horses, cattle, sheep, pigs, harness, carriages, carts, implements of husbandry, corn, hay, and live and dead farming stock of every kind, now used or employed in or upon the farm at —— aforesaid, now in the occupation of the wife, or of the trustees of the will of J. D., her late husband (all which last-mentioned premises are hereinafter referred to as "farming stock"), TO HOLD the said Consolidated Stock, furniture and household effects, and farming stock UNTO the trustees, IN TRUST for the wife, her executors and administrators, until the said intended marriage, and after the solemnization thereof. UPON TRUST that they the trustees shall either

Witnesseth, secondly.

Assignment by the wife;

—of sum of stock;

—furniture in a house.

Of a share of farming stock.

Habendum.

In trust for the wife until the marriage.

(*a*) See *supra*, p. 507, n. (*b*).

permit the said Consolidated Stock, or any part thereof, to remain unaltered, or shall, upon the direction in writing of the wife (*a*) during her life, and after her death, at the discretion of the trustees sell the same or any part thereof: AND SHALL, during the life of the wife, permit the whole or any part of the said furniture and household effects to be used and enjoyed by the wife, or shall, upon the direction in writing of the wife, sell the same or any part thereof, in such manner as the wife shall in writing direct; and if any part of the said premises shall, at the death of the wife, remain unsold, shall forthwith sell the same in such manner as the trustees shall think fit; AND SHALL, as soon as conveniently may be after the solemnization of the said intended marriage, sell, call in, and convert into money the said share, estate, and interest hereinbefore expressed to be hereby assigned in the said farming stock; AND SHALL, upon the direction in writing of the wife, during her life, and after her death, at the discretion of the trustees, invest the monies produced by the sale, calling in and conversion into money of the said Consolidated Stock, furniture and household effects, and share of farming stock, or any of them, or any part or parts thereof respectively, in the names, or under the legal control of the trustees, in or upon any of the stocks, funds, or securities hereinbefore authorized for the investment of the said sum of £—— (*b*); and may from time to time, upon such direction or at such discretion as aforesaid, vary such investments for others of any kind hereby authorized; AND SHALL pay the income, &c. [*trusts for wife and husband successively during their lives, supra,*

Trusts to sell the stock on direction of the wife;

—to permit her to use the furniture during her life;

—or to sell on her direction;

—to sell, after her death, the unsold part;

—to sell the farming stock.

Trust for investment.

Income to wife during joint lives, and to the survivor.

(*a*) In this case it is agreed that the lady retains the absolute control of her own property. Notice that the stock is the wife's separate property, and may be entered as such in the bank books under sect. 7 of "The Married Women's Property Act, 1882," App. XII., *infra*.

(*b*) The sum covenanted to be paid by the husband.

PRECEDENT CXXVIII.

ON MARRIAGE, OF SUM TO BE PAID BY HUSBAND, AND WIFE'S PROPERTY, ISSUE OF MARRIAGE NOT BEING CONTEMPLATED.

Trust for the wife's children equally.

p. 469]. AND AFTER the death of the wife and the husband shall hold the same Consolidated Stock and monies, and the investments for the time being representing the same respectively, and the income thereof, IN TRUST for all the children or any the child of the wife, now living or hereafter to be born, who being sons or a son shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or marry under that age, and if more than one in equal shares (*a*) [*advancement clause, supra*, p. 470; *trust on failure of children entitled under the preceding trust for the wife, supra*, pp. 471, 472, *except that for* "child of the said intended marriage," "child of the wife" *must be substituted, and that* "default or" *must be omitted*]: PROVIDED ALWAYS, and it is hereby agreed that, if in the execution of any of the trusts or powers hereof, it shall become necessary to divide or apportion between two or more persons, the several funds, the trusts whereof are hereinbefore declared, and all or any of the monies, stocks, funds, shares, or securities for the time being representing the same, shall be so blended together that the original funds from which the same shall respectively have proceeded cannot be distinguished, the trustees may divide or apportion the said monies, stocks, funds, shares, and securities between or among the several persons entitled thereto in such manner as to them shall seem just, and such division or apportionment shall be as conclusively binding on all persons interested in the premises as if it had been made by a

Power to apportion blended funds.

(*a*) The children here intended to be provided for are infant children of a previous marriage; but the words are sufficiently extensive to include children of the contemplated marriage. If any of the children of the previous marriage are adult, the trust would be for children who being sons or a son have attained or shall attain twenty-one, or being a daughter or daughters have attained or shall attain that age or have married or shall marry under that age, and the trust on failure of children would of course be omitted.

court of competent jurisdiction, AND the trustees may decide [*remainder of power to settle questions and deal with the premises as absolute owners, supra*, p. 483; *power to appoint new trustees, and additional indemnities, so far as appropriate, ut supra*, pp. 483—486, *adding after* "breach of trust" *the words*, "and the trustees shall not be answerable for loss, destruction, waste, or damage of or to the said furniture and household effects, and farming stock, or any part or parts thereof respectively"; *Declaration as to devolution of powers of trustees, supra*, p. 486]. IN WITNESS, &c.

PRECEDENT CXXVIII.

ON MARRIAGE, OF SUM TO BE PAID BY HUSBAND, AND WIFE'S PROPERTY, ISSUE OF MARRIAGE NOT BEING CONTEMPLATED.

Power to appoint new trustees and indemnities.

CXXIX.

SETTLEMENT *on* MARRIAGE *of a sum raiseable for* WIFE *under the trusts of a* PORTIONS TERM, *and a sum secured by the* COVENANT *of the* HUSBAND'S FATHER.

PRECEDENT CXXIX.

ON MARRIAGE, OF WIFE'S PORTION, AND SUM TO BE PAID BY HUSBAND'S FATHER.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. [*intended husband*], of the first part, C. D., of, &c. [*intended wife*], of the second part, E. B., of, &c. [*husband's father*], of the third part, and E. F., of, &c., G. H., of, &c., and I. K., of, &c. [*trustees*] (hereinafter called the trustees), of the fourth part. WHEREAS, by virtue of an indenture dated the —— day of ——, and expressed to be made between [*parties*] (being a settlement made in consideration of the marriage afterwards solemnized between the said —— and ——), the said C. D. is absolutely entitled to the sum of £—, being one equal fourth part of £——, raiseable for portions of younger children of the said marriage, under the trusts of a term of —— years, by the same indenture limited in estates situate in the county of ——; AND WHEREAS a marriage is intended to be solemnized between the said A. B. (hereinafter called the husband), and the said

Parties.

Recital that the wife is entitled to share of a sum of money raiseable under the trusts of a term;

—of intended marriage;

PRECEDENT CXXIX.

ON MARRIAGE, OF WIFE'S PORTION, AND SUM TO BE PAID BY HUSBAND'S FATHER.

C. D. (hereinafter called the wife); AND WHEREAS on the treaty for the said intended marriage, it was agreed that the wife should assign the said sum of £—— (*a*) and the interest for the same in manner hereinafter appearing; AND WHEREAS on the treaty for the said intended marriage it was agreed that the said E. B. should enter into the covenants hereinafter entered into by him. Now THIS INDENTURE WITNESSETH, that in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, the wife, as SETTLOR, with the approbation of the husband (*b*), doth hereby assign unto the trustees, ALL THAT the principal sum of £—— to which the wife is entitled as aforesaid, being one equal fourth part of the said sum of £——, raiseable under the said term of years and all interest due and to become due for the same, TO HOLD the said premises UNTO the trustees, IN TRUST for the wife, her executors and administrators, until the said intended marriage, and after the solemnization thereof, UPON THE TRUSTS hereinafter declared concerning the same (*c*). AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, the said E. B. doth hereby covenant with the trustees, that he the said E. B., his heirs, executors, or administrators, will, within six calendar months from the solemnization of the said intended marriage, pay to the trustees, their executors or administra-

—of agreement to assign;

—of agreement for covenant of the husband's father.

Witnesseth.

Assignment of sum of money.

Habendum.

Trust for wife till marriage;

—after, on trusts after-declared.

Witnesseth, secondly.

Covenant by husband's father;

—to pay to the trustees within six months after the marriage a sum of money,

(*a*) The sum to which the intended wife is entitled.

(*b*) See *supra*, p. 507, n. (*b*).

(*c*) Such an assignment is generally, and should, as a rule, be made by a separate instrument, in order to avoid rendering the settlement part of the title to the estates charged with the portions. When this arrangement is adopted the trusts are declared by the assignment by reference to the settlement (see Precedent CXIX., *supra*, p. 486), and the assignment is recited in the settlement, which in other respects would be the same as that of which a Precedent is here given.

PRECEDENT CXXIX.

ON MARRIAGE, OF WIFE'S PORTION, AND SUM TO BE PAID BY HUSBAND'S FATHER.

tors, the sum of £——, with interest thereon, at the rate of £— per cent. per annum from the day of such solemnization, without deduction; AND if the said sum of £— — shall not be paid within the six calendar months aforesaid, will pay to the trustees, their executors or administrators, interest for the said sum of £——, or for so much thereof as shall for the time being remain unpaid, at the rate aforesaid, by equal half-yearly payments, and will make the first such payment at the end of six calendar months from the solemnization of the said intended marriage: PROVIDED ALWAYS, and it is hereby declared, that the trustees shall not compel payment of the said sum of £——, or any part thereof, during the joint lives or life of the husband and the wife, or the survivor of them, without their, his, or her consent in writing, and shall not be answerable for any loss occasioned by delay or omission to compel such payment, whether during such lives or life, or afterwards (*a*);

—and interest.

Trustees not to be bound to enforce payment.

(*a*) If it be not intended that the money shall be paid according to the strict letter of the covenant, a proviso of this nature should be inserted to protect the trustees from the liability they would otherwise incur by abstaining from requiring payment at the time appointed. See Dav. Prec. Conv., vol. iii. 3rd ed. p. 802, n. (*k*). The covenant might be, "that if the said intended marriage shall take place, he the said E. B., his heirs, executors, or administrators, will at such time or times during his life as he shall think fit, or within six calendar months after his death, pay to the trustees the sum of £——, and in the meantime and until the whole of the same sum shall have been so paid will pay, &c." And in that case the proviso would be unnecessary. The same form, with a suitable modification as to the interest, may be adopted, where the covenantor contemplates payment after his death, and does not undertake to pay interest in his lifetime. In that case succession duty will be payable on the sum secured when it falls in by the death of the covenantor. See *Re Micklethwaite*, 11 Exch. 452; *Lord Advocate* v. *Roberts' Trustees*, 20 Scotch Sess. Cas. 2nd Ser. 449. But it would seem to be otherwise where interest, or an annuity

PRECEDENT CXXIX.

ON MARRIAGE, OF WIFE'S PORTION, AND SUM TO BE PAID BY HUSBAND'S FATHER.

Declaration of trust after the marriage;

AND IT IS HEREBY AGREED, that after the solemnization of the said intended marriage, the trustees shall either permit the said sum of £—— [*the sum raiseable under the trusts of the term*], to remain on the present security for the same, or shall, at the request of the husband and the wife during their joint lives, or of the survivor of them, during his or her life, and after the death of such survivor, at the discretion of the trustees, call in the same, and shall, at such request or discretion as aforesaid, invest the same and also the said sum of £—— [*the sum secured by covenant*], as and when the same shall be respectively received in the names, or under the legal control of them, &c. [*remainder of trusts as to investment and varying investment, supra*, pp. 468, 469, *substituting the words* "at such request," *for* "with such consent"],

—on request to vary investments.

Trust to pay an annual sum to wife during joint lives.

AND SHALL, during the joint lives of the husband and the wife, out of the income of the said sums, and of the investments for the time being representing the same respectively, pay to the wife for her separate use, the yearly sum of £——, to be payable (*a*) by equal quarterly payments on the —— day of ——, the —— day of——, the —— day of ——, and the —— day of —— in every year, and shall make the first such payment on such of

in lieu of interest, is payable on the sum secured until it falls in (see Hanson's Death Duties, 5th ed. p. 497); and in *Att.-Gen.* v. *Montefiore*, 21 Q. B. D. 461, this distinction appears to have been lost sight of. The estate duty in respect of the amount owing on the covenant is payable out of the covenantor's estate, and where the covenant is for payment of the sum "without deduction" the settlement estate duty is also so payable: *Re Maryon-Wilson*, [1900] 1 Ch. 565; see also *Re Turnbull*, [1905] 1 Ch. 726. As to the rate of the latter duty, see now the Finance (1909-10) Act, 1910, s. 54.

(*a*) As under the 2nd section of "The Apportionment Act, 1870" (33 & 34 Vict. c. 35), all annuities are to be considered as accruing from day to day, and to be apportionable in respect of time accordingly, the provision to the same effect, inserted here in earlier editions, has been omitted since the passing of that Act.

the aforesaid days as shall happen next after the solemnization of the said intended marriage, and the wife shall not have power to deprive herself of the said yearly sum of £—— in anticipation; AND SHALL pay the residue of the said income to the husband during the joint lives of the husband and the wife, AND after the death of either of them, shall pay the whole of the said income to the survivor of them during his or her life, but so that as regards the wife such contingent reversionary interest shall during her said intended coverture be and remain her separate property, without power of anticipation [*declaration of trust, after the death of the husband and wife, for the issue of the intended marriage, as they or the survivor shall appoint; in default of appointment, in trust for children equally, with hotchpot and advancement clauses, ut supra*, pp. 469, 470; *in default of children for the husband absolutely, ut supra*, p. 511 (*a*): *Power to appoint new trustees, and additional indemnities, so far as required, ut supra*, pp. 483—486. *Declaration as to devolution of powers of trustees*, p. 486]. IN WITNESS, &c.

PRECEDENT CXXIX.

ON MARRIAGE, OF WIFE'S PORTION, AND SUM TO BE PAID BY HUSBAND'S FATHER.

Residue of income to the husband during the joint lives.

The whole to the survivor.

CXXX.

SETTLEMENT, *on* MARRIAGE, *of* STOCK, *the younger children of the marriage taking in exclusion of an eldest son entitled to settled real estate, with* COVENANT *by the father of the intended husband to pay an* ANNUITY.

PRECEDENT CXXX.

ON MARRIAGE, OF STOCK, THE YOUNGER CHILDREN TAKING IN EXCLUSION OF AN ELDEST SON.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. [*intended husband*], of the first part, C. D., of, &c.

Parties.

(*a*) In the more usual case of the property settled by the wife being, in default of children, secured to herself or her next of kin, the ultimate trust will be in the form given at pp. 471, 472.

PRECEDENT CXXX.

ON MARRIAGE, OF STOCK, THE YOUNGER CHILDREN TAKING IN EXCLUSION OF AN ELDEST SON.

[*intended wife*], of the second part, E. D., of, &c. [*father of intended wife*], of the third part, F. B., of, &c. [*father of intended husband*], of the fourth part, and G. H., of, &c., I. K., of, &c., and L. M., of, &c. [*trustees*] (hereinafter called the trustees), of the fifth part, WITNESSETH, that, in consideration of a marriage intended to be solemnized between the said A. B. (hereinafter called the husband), and C. D. (hereinafter called the wife), IT IS HEREBY AGREED that the trustees shall hold the sum of £——, Two and a half per Cent. Consolidated stock, lately transferred by the said E. D., with the assent of the husband and the wife, into the names of the trustees, IN TRUST for the said E. D., his executors and administrators, until the said intended marriage, AND after the solemnization thereof shall either permit the said Stock or any part thereof to remain unaltered, or shall, with the consent in writing of the husband and the wife, during their joint lives, and of the survivor of them during his or her life, and after the death of such survivor, at the discretion of the trustees, sell the same or any part thereof, and invest the monies produced thereby in their names, or under their legal control in [*remainder of trusts as to investment and varying investment, supra*, pp. 468, 469]; AND SHALL pay the income of the said Stock, and of the investments for the time being representing the same, to the husband during the joint lives of himself and the wife, AND after the death of either of them the husband and the wife to the survivor of them, during his or her life, but so that as regards the wife such contingent reversionary interest shall during her said intended coverture be and remain her separate property without power of anticipation; AND AFTER the death of such survivor shall hold the said Stock and investments, and the income thereof, IN TRUST for all or any of the issue of the said intended marriage, other than an eldest or only son for the time being entitled to the first estate in tail male, under the

Witnesseth.

Declaration of trust of stock.

In trust for wife's father until the marriage.

Trusts as to investment and varying investment.

Trusts of income for husband for life;

—for survivor for life.

Trusts for issue, exclusive of eldest son and his

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limitations of an indenture, dated, &c., and expressed to be made between [*parties*], [and the issue of such eldest or only son] in such manner in every respect as the husband and wife shall by deed or writing jointly appoint; AND in default of and subject to any such appointment, as the survivor of the husband and the wife shall by deed, or will, or codicil, appoint; AND in default of and subject to any such appointment, IN TRUST for all the children or any the child of the said intended marriage (other than an eldest or only son, and any other son or sons who before attaining the age of twenty-one years shall become entitled to the first estate in tail male under the limitations aforesaid), who being sons or a son shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or marry, and if more than one, in equal shares. AND IF there shall be no child, other than as aforesaid, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry under that age, then IN TRUST for the eldest or only son of the said intended marriage who shall attain the age of twenty-one years [*hotchpot and advancement clauses, ut supra*, p. 470]. AND IT IS HEREBY DECLARED that if there shall be no child of the said intended marriage, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry [*remainder of dispositions in default of children entitled, ut supra*, p. 472]. AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the said intended marriage, HE the said F. B. doth hereby, with the approbation of the husband and the wife, covenant with the trustees, that, if the said intended marriage shall be

issue, as the husband and wife shall appoint (*a*);

—in default, as the survivor shall appoint;

—in default for younger children of the marriage;

—and in default of such, for eldest son.

Disposition in default of children entitled under preceding trusts.

Witnesseth, secondly.

Covenant to pay an annuity to the trustees.

(*a*) It is not unusual, and is perhaps more convenient, to exclude the eldest son only from the trust in default of appointment, thus leaving it within the discretion of the husband and wife to make an appointment in his favour if they please. As to the form of the trust in other respects, see p. 469, *supra*, n. (*c*).

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ON MARRIAGE, OF STOCK, THE YOUNGER CHILDREN TAKING IN EXCLUSION OF AN ELDEST SON.

solemnized, he the said F. B. will pay to the trustees, during the joint lives of himself and the wife, the annual sum of £——; and if the wife shall die in the lifetime of the covenantor, then, during the remainder of the life of the covenantor, if and so long as the husband or any issue of the marriage shall be living, the annual sum of £——, such annual sum of £—— or £——, as the case may be, to be paid by equal quarterly payments on the usual quarter days; and the first payments thereof respectively to be made as to the said annual sum of £—— on such of the said quarter days as shall happen next after the solemnization of the said intended marriage, and as to the said annual sum of £—— on such of those days as shall happen next after the death of the wife (*a*).

Trusts of annuity.

AND IT IS HEREBY AGREED that the trustees shall pay and apply the said annual sum of £—— or £—— as the case may be, to the persons and in the manner to whom and in which the income of the said Stock, and of the investments for the time being representing the same shall for the time being be payable or applicable. [*Power to appoint new trustees and additional indemnities so far as applicable, ut supra*, pp. 483–486; *Declaration as to devolution of trusts, supra*, p. 486.] IN WITNESS, &c.

CXXXI.

PRECEDENT CXXXI.

CONVEYANCE, ON MARRIAGE, OF FREEHOLDS, IN TRUST FOR SALE.

CONVEYANCE *in Contemplation of* MARRIAGE, *of a* FREEHOLD ESTATE IN TRUST *for* SALE, *with a* DECLARATION *of* TRUST *of the* PURCHASE-MONEY *by reference to a* SETTLEMENT *of* EVEN DATE (*b*).

Parties.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*intended husband*], of the first part, B., of, &c. [*intended*

(*a*) See p. 522, n. (*a*).

(*b*) See *infra*, p. 556, n. (*c*), with reference to this form of settlement. Under sect. 63 of the Settled Land Act, 1882 (Appendix

wife], of the second part, and C., of, &c., D., of, &c., and E., of, &c. [*trustees*] (hereinafter referred to as the

VII., *infra*), the real estate comprised in such a settlement will, until sale, be settled land, and the person for the time being beneficially entitled to the income until sale is to be deemed tenant for life thereof. It would seem, from the context, that in this section a person beneficially entitled to income means a person so entitled for life or any other limited period. The result of this statutory provision is, that the equitable tenant for life under such a settlement, will, so long as the real estate remains unsold, have the powers of sale and leasing given by the Act to legal tenants for life. But under the Settled Land Act, 1884 (Appendix VIII., *infra*), s. 7, these powers are not to be exercised without the leave of the Court, and the general result of that section read with sect. 6 (which settles a disputed point as to the construction of sects. 53 and 63 of the former Act, upon which *Taylor* v. *Poncia*, 25 Ch. D. 646, and *Re Harding's Estate*, [1891] 1 Ch. 60, may be referred to) is that until such leave is obtained, and the order giving it is registered against the trustees as a *lis pendens*, they will be free to dispose of the property under the trust for sale. In the edition published between the passing of the Act of 1882 and the passing of the Act of 1884, it was thought desirable to frame the conveyance in trust for sale (forming the present Precedent) so as to show who would be equitable tenant for life under the settlement of the real estate while unsold, and for that purpose to transfer, from the deed settling the proceeds of sale (see next Precedent), the trust for application of rents until sale, to the present deed, with some modification of its form, so that, on any lease or sale by the tenant for life under the above powers, a complete title could be made out by the production of the present deed only. But the reason for this change having ceased in consequence of the passing of the Act of 1884, the trust was in the later editions retransferred to its former and natural position in the next Precedent. It is assumed that the cases in which a tenant for life under such a settlement obtains leave to exercise his powers as such, will be rare, and that in any such case the settlement must practically come to form part of the title.

The Settled Land Acts, 1882 to 1890, App. VII. to XI., *infra*, appear not to render necessary any alteration in this form of settlement; and it is considered that such a settlement still affords the best way of dealing with real estate, when it is intended to be divided among the children of the marriage.

PRECEDENT CXXXI.

CONVEYANCE, ON MARRIAGE, OF FREEHOLDS, IN TRUST FOR SALE.

trustees), of the third part, WITNESSETH, that, in consideration of a marriage intended to be shortly solemnized between the said A. and B., she, the said B., AS BENEFICIAL OWNER (*a*) and with the approbation of the said A., doth hereby grant unto the trustees, their heirs and assigns, ALL THOSE (*b*), &c. [*parcels, supra*, pp. 136, 138, &c.], TO HOLD the premises UNTO and TO THE USE of the trustees, their heirs and assigns, IN TRUST for the said B., and her heirs, until the said intended marriage; AND AFTER the solemnization thereof, UPON TRUST that the trustees shall, with the consent of the said A. and B. during their joint lives, and of the survivor of them during his or her life, and after the death of such survivor at the discretion of the trustees sell the said premises (*c*): AND shall hold the monies to arise from any such sale (after payment thereout of all expenses), and also the rents and profits of the same premises or of the unsold part thereof for the time being upon such trusts, and with and subject to such powers and provisions, as shall be declared of the same respectively by a deed already engrossed, and intended to bear even date with these presents and to be made, or expressed to be made between the said persons as are parties to these presents [*or, if the parties to the settlement be not identical with those to the conveyance, specifying the parties here*]. AND IT IS HEREBY DECLARED, that the trustees may at any time or times before all the said premises shall have been sold, with the consent of the said A. and B., during their joint lives, and of the survivor of them during his or her life, and after the death of such survivor at their own discre-

Witnesseth. Conveyance to trustees. Habendum. In trust for the wife till marriage; and after marriage in trust for sale. Trusts of the monies to arise from the sale, and of rents and profits till sale.

Power of leasing.

(*a*) See *infra*, p. 557, n. (*a*).

(*b*) Or "ALL THAT undivided — part or share of her the said B. of and in ALL THOSE, &c."

(*c*) A simple trust to sell, with a nomination of the persons (if any) with whose consent, and an intimation of the time when, the sale is to be made is now sufficient, the 13th section of the Trustee Act, 1893 (App. XVI., *infra*), rendering further powers superfluous.

tion (*a*), demise all or any of the said premises for any term, &c. [*remainder of leasing power as at* p. 563, *infra*].

(*a*) Except in the rare cases where the dispositions of the settlement are such as to make no person tenant for life within the meaning of the Settled Land Act, 1882, the large leasing powers given by that Act (see also the Settled Land Act, 1889, App. X., *infra*) must necessarily be exerciseable, with, if not without, the leave of the Court, at least during the life tenancies. Hence the editors consider that the usual powers to grant both ordinary twenty-one years' leases, and ninety-nine years' building or repairing leases, should be given to the trustees. If, as is perhaps preferable, the trustees are to have the leasing powers given by the Act, the form in the text after the word "discretion" will proceed "exercise over and in relation to the said premises or any part thereof, all such powers of, or with respect to, leasing, and powers ancillary thereto, as are conferred on a tenant for life of settled land by sects. 6 to 13, both inclusive, of the Settled Land Act, 1882, and the Settled Land Acts, 1889 and 1890." It is thought, that in accordance with former practice, further or more extensive powers need not, as a rule, be given. But if such powers are desired, they might, it is apprehended, be conferred by inserting after the word "discretion" and in lieu of the words above suggested to be there inserted, the words "exercise over or in relation to the said premises all the powers of a tenant for life under the Settled Land Acts, 1882 to 1890."

When the property consists of an undivided share, the following clauses should be inserted :—

"PROVIDED ALWAYS that the trusts and powers hereinbefore contained may be respectively exercised as to the said share hereinbefore granted either alone or in conjunction with the person or persons entitled to the other shares or share in the same hereditaments or any of them at an entire price or rent for the hereditaments sold or demised, and generally in any manner the trustees shall think fit. PROVIDED ALWAYS that the trustees may, with such consent or at such discretion as aforesaid, concur with

Power to sell or lease the share alone or to concur in sale or lease of entirety.

Power of partition.

PRECEDENT CXXXI.

CONVEYANCE, ON MARRIAGE, OF FREEHOLDS, IN TRUST FOR SALE.

[*Power to appoint new trustees, supra*, p. 483, *and declaration as to devolution of powers of trustees, supra*, p. 486 (*a*).] IN WITNESS, &c.

THE SCHEDULE above referred to.

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the person or persons for the time being entitled to dispose of the other shares or share in the said hereditaments or any of them in making a partition, upon such terms as may be thought reasonable, of the same, and give or receive monies for equality of partition, and the hereditaments which shall upon any such partition be taken by the trustees, and the rents and profits thereof, shall be subject to such trusts, powers, and provisions as by virtue of these presents shall be subsisting or capable of taking effect concerning the said share hereinbefore granted, and the rents and profits thereof respectively, other than this present power of partition, and any monies received by the trustees for equality of partition shall be held and applied by them for the same purposes and in the same manner as is hereinbefore directed with respect to monies to arise from any sale made in execution of the trust for sale hereinbefore contained, and the trustees may out of any monies for the time being in their hands, produced by any such sale as aforesaid, pay any monies they may agree to pay for equality of partition."

(*a*) If the land is registered, this deed will be accompanied by a transfer to the trustees in the prescribed form; and proper inhibitions or restrictions should be entered on the register. See *supra*, p. 94.

CXXXII.

SETTLEMENT, *on* MARRIAGE, *of* MONEY *to arise from a* FREEHOLD ESTATE *conveyed to* TRUSTEES *by a* DEED *of* EVEN DATE, *in* TRUST *for* SALE (*a*). *The* HUSBAND *takes a* CONTINGENT REVERSIONARY DETERMINABLE *and* PROTECTED LIFE INTEREST.

PRECEDENT CXXXII.

ON MARRIAGE, OF PROCEEDS OF FREEHOLDS CONVEYED IN TRUST FOR SALE BY DEED OF EVEN DATE, HUSBAND TAKING A PROTECTED INTEREST.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*intended husband*], of the first part, B., of, &c. [*intended wife*], of the second part, and C., of, &c., D., of, &c., and E., of, &c. [*trustees*] (hereinafter called the trustees), of the third part. WHEREAS a marriage is intended to be shortly solemnized between the said A. (hereinafter called the husband) and the said B. (hereinafter called the wife): AND WHEREAS by an indenture bearing even date with, but executed before, these presents, and expressed to be made between the same persons as are parties to these presents (*b*) [an undivided —— share in] certain hereditaments in the parish of ——, in the county of ——, [has] have been conveyed to the use of the trustees, their heirs and assigns, in trust for the wife, and her heirs, until the said intended marriage, and after the solemnization thereof, upon trust that the trustees shall, with such consent or at such discretion as therein mentioned, sell the same, and shall hold the net monies to arise from such sale of the said hereditaments and also the rents and profits of the same premises, or of the unsold part thereof,

Parties.

Recital of intended marriage;

—of the conveyance of real estate by a deed of even date, to trustees, in trust to sell and hold the purchase-money on the trusts of the present deed.

(*a*) The deed referred to is Precedent CXXXI., and the real estate is supposed to have belonged to the wife. For the form of trusts applicable to the proceeds of real estate belonging to the husband, see Precedent CXXXIV., *infra*.

(*b*) *Or* "by the joint operation of an indenture bearing, &c., and of an instrument of transfer in the prescribed form, also bearing even date with, but executed before, these presents."

PRECEDENT CXXXII.

ON MARRIAGE, OF PROCEEDS OF FREEHOLDS CONVEYED IN TRUST FOR SALE BY DEED OF EVEN DATE, HUSBAND TAKING A PROTECTED INTEREST.

upon the trusts to be declared of the same respectively by these presents [and in the indenture now in recital is contained a power of partition, with usual ancillary trusts]. NOW THIS INDENTURE WITNESSETH, and it is hereby declared, that the trustees, and the survivors and survivor of them, and the executors or administrators of such survivor (which several persons, and other the trustees or trustee for the time being of these presents are hereinafter included in the expression "the trustees"), shall, with the consent in writing of the husband and the wife, during their joint lives, and of the survivor during his or her life, and after the death of such survivor, at the discretion of the trustees, invest the said net monies to arise from any and every sale under the hereinbefore recited indenture [either of the said undivided share in the said hereditaments, or of the hereditaments to be taken in entirety upon any partition under the said power in that behalf, and any monies received by the trustees for equality of partition] [*remainder of trusts as to investment and varying investment, supra*, p. 468]. AND shall pay the income of the said monies and of the investments for the time being representing the same (hereinafter referred to as the said trust funds) to the wife during her life, but during her said intended coverture for her separate use without power of anticipation; AND after the death of the wife, if the husband shall survive her and shall not [have been or become a bankrupt and shall not have assigned, charged, or incumbered, the income of the said trust funds or any part thereof or (*a*)] have done or suffered anything whereby the same or any part thereof would, through his act or default, or by operation or process of law or otherwise, if belonging absolutely to him, have become vested in or payable to some other person or persons [or have ceased to become

Witnesseth declaration of trust of the monies to arise from a sale.

Trusts as to investment.

Trust for wife for life;

—and after her death for husband until alienation.

(*a*) It is thought that the words in square brackets may be omitted with safety.

payable to himself (*a*)], pay the income of the said trust funds to the husband during his life or until he shall [become a bankrupt or shall assign, charge, or incumber the said income or some part thereof or shall] do or suffer something whereby the same or some part thereof would [through his act or default, or by operation or process of law or otherwise], if belonging absolutely to him, become vested in or payable to some other person or persons [or cease to become payable to himself]: AND AFTER the death of the wife and the failure or determination of the trust hereinbefore declared of the said income in favour of the husband, if the same shall fail or determine in his lifetime, shall, if the trustees shall in their absolute discretion think fit, but not otherwise, pay or apply such income or any part thereof in their discretion for or towards the maintenance and personal support of the husband and his wife (if any) and child or children and other issue for the time being in existence (whether by the said intended or any future marriage), or at the discretion of the trustees, for or towards the maintenance and personal support of such one or more, to the exclusion of the others or other of such objects of the present discretionary trust or power, in such manner as the trustees shall think proper during the remainder of the life of the husband; AND shall during such remainder of the life of the husband from time to time pay or apply all the residue not applied under the discretionary trust or power lastly hereinbefore contained of the same income, or the whole of such income if no part thereof shall be so applied, in the manner in which the same would be payable or applicable if the husband were then dead; AND AFTER the

Power to apply income for benefit of husband after the determination of his life interest by alienation;

—unapplied income during his life to be applied as if he were dead.

(*a*) See *Re Brewer's Settlement*, [1896] 2 Ch. 503, where the fund had been lent to and dissipated by the husband. The case (which was a difficult one) suggests the desirability of adding these words, at any rate when there is a power to lend the fund to the husband.

PRECEDENT CXXXII.

ON MARRIAGE, OF PROCEEDS OF FREEHOLDS CONVEYED IN TRUST FOR SALE BY DEED OF EVEN DATE, HUSBAND TAKING A PROTECTED INTEREST.

Trusts for application of rents until sale.

death of the survivor of them the husband and wife shall hold the said trust funds and the income thereof IN TRUST, &c. [*for issue and children of the marriage; hotchpot clause; power of advancement* (*a*); *and ultimate trusts, supra,* pp. 469—472]. AND IT IS HEREBY DECLARED that, after the solemnization of the said intended marriage, and until all the said hereditaments shall be sold, the trustees shall pay and apply the rents and profits [including the proceeds of the sale of timber (*b*)] of the said premises, or of the unsold part thereof, (after payment thereout of all rates, taxes, expenses of repairs and insurance, and other outgoings,) in the manner in which the income of the investments representing the net monies arising from a sale under the trust for sale in the hereinbefore recited indenture contained, would be for the time being payable and applicable, if the said premises had then been sold, and the net monies arising from such sale had been invested as hereby directed (*c*) [*power to appoint new trustees and additional indemnities so far as required, ut supra,* pp. 483—486]. IN WITNESS, &c.

(*a*) For a settlement of this description the ordinary forms are preferable to those contained in Precedent CXX.

(*b*) "Rents and profits" do not include proceeds of timber sold. (See Davidson's Prec. Con., 3rd ed. vol. iii. p. 288, and authorities cited there in note (*b*), and *Lowndes* v. *Norton*, 33 L. J. Ch. 583.) Hence, when the land settled has timber of any value, the words in brackets should be added, if it is desired to give the equitable tenant for life the right to any income arising from sale of timber, independently of the limited rights in this respect given by sect. 35 of the Settled Land Act, 1882. Windfalls may also be included if thought fit. As to what ought to be done with such if there be no express directions as to them in the settlement, see *Re Harrison*, 28 Ch. D. 220.

(*c*) See *Re Searle*, [1900] 2 Ch. 829, where there was no provision as to the destination of rents and profits until sale, and the person entitled to the income of the investments representing the proceeds was held entitled to the rents and profits until sale: *Re Earl of Darnley*, [1907] 1 Ch. 159; *Re Oliver*, [1908] 2 Ch. 74.

CXXXIII.

Assignment *in contemplation of* Marriage, *of a* Leasehold *Messuage upon* Trust *for* Sale (*a*).

Precedent CXXXIII.

Assignment on marriage, of leaseholds in trust for sale.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. [*intended husband*], of the first part, C. D., of, &c. [*intended wife*], of the second part, and E. F., of, &c., G. H., of, &c., and I. K., of, &c. [*trustees*] (hereinafter called the trustees), of the third part. WHEREAS by an indenture dated, &c. ——, and expressed to be made between [*parties*], ALL THAT [*parcels from the lease*], together with the appurtenances, were demised to the said ——, his executors, administrators, and assigns, from the —— day of —— then last, for the term of —— years, at the yearly rent of £——, and subject to covenants by the lessee and conditions therein contained; AND WHEREAS the premises comprised in the hereinbefore recited indenture are now vested in the said A. B. for the residue of the said term of —— years; AND WHEREAS a marriage is intended to be solemnised between the said A. B. and C. D.; NOW THIS INDENTURE WITNESSETH, that, in consideration of the said intended marriage, and in pursuance of an agreement entered into on the treaty for the same, the said A. B. AS BENEFICIAL OWNER (*b*), and with the approbation of the said C. D., doth hereby assign unto the trustees, their executors, administrators, and assigns, ALL the hereditaments and premises comprised in or demised by the hereinbefore recited indenture, TO HOLD the said premises UNTO the trustees, their executors, administrators, and assigns, for the residue of the said term of —— years, at the rent and subject to

Parties.

Recital of lease;

parcels from the lease;

—that the demised premises are vested in the husband,

—of intended marriage.

Witnesseth.

Assignment to trustees.

Parcels.

Habendum.

(*a*) See note (*b*) at p. 526, *supra*. The leasehold interest here dealt with is under sect. 2 (3), land within the meaning of "The Settled Land Act, 1882" (App. VII., *infra*).

(*b*) See *infra*, p. 557, n. (*a*).

PRECEDENT CXXXIII.

ASSIGNMENT ON MARRIAGE, OF LEASEHOLDS IN TRUST FOR SALE.

In trust for the husband till the marriage; —after, in trust for sale.

the covenants by the lessee and conditions in the hereinbefore recited indenture reserved and contained, and henceforth to be paid, performed, and observed; IN TRUST for the said A. B., his executors and administrators, until the said intended marriage, and after the solemnization thereof, UPON TRUST that the trustee shall at the request in writing of the said A. B. and C. D., during their joint lives, and of the survivor of them during his or her life, and after the death of such survivor, at the discretion of the trustees, sell the said premises. [*Trust of monies to arise from the sale, and power of leasing so far as appropriate, ut supra*, p. 528 (*a*). *Power to appoint new trustees*, p. 472. *Declaration as to devolution of trustees' powers*, p. 486, *supra*.] IN WITNESS, &c.

CXXXIV.

PRECEDENT CXXXIV.

ON MARRIAGE, OF PROCEEDS OF SALE OF LEASEHOLDS AND STOCK SETTLED BY HUSBAND, AND BONDS SETTLED BY WIFE'S FATHER.

SETTLEMENT, *on* MARRIAGE, *of the* PROCEEDS *of sale of a Leasehold House, and of* STOCK *belonging to the* HUSBAND, *and of* BONDS *belonging to the* WIFE'S FATHER: PROVISO *enabling the married couple to* OCCUPY *the* HOUSE *as a* RESIDENCE (*b*).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. [*intended husband*], of the first part, C. D., of, &c. [*intended wife*], of the second part, E. D., of, &c. [*wife's father*], of the third part, and E. F., of, &c., G. H., of, &c., and I. K., of, &c. [*trustees*] (hereinafter called the trustees), of the fourth part. WHEREAS a marriage is intended to be solemnized between the said A. B. (here-

Parties.

Recital of intended marriage.

(*a*) The usual covenants in assignments of leaseholds for payment of rent and performance of covenants by the assignees are omitted, as trustees cannot be expected to enter into such covenants.

(*b*) This Precedent is the settlement referred to in, and connected with, Precedent CXXXIII.

PRECEDENT CXXXIV.

ON MARRIAGE, OF PROCEEDS OF SALE OF LEASEHOLDS AND STOCK SETTLED BY HUSBAND, AND BONDS SETTLED BY WIFE'S FATHER.

inafter called the husband) and C. D. (hereinafter called the wife). AND WHEREAS, in pursuance of an agreement entered into on the treaty for the same, by an indenture of even date with but executed before these presents, and expressed to be made between, &c. [*parties*], the husband, with the approbation of the wife, has assigned a messuage and hereditaments comprised in and demised by an indenture of lease, dated, &c., and expressed to be made between [*parties*], unto the trustees, for the residue of the term of —— years expressed to be granted by the said lease at the rent and subject to the covenants by the lessee, in the said lease reserved and contained, in trust for the husband, his executors and administrators, until the said intended marriage, and after the solemnization thereof, upon trust that the trustees shall, at such request or discretion as therein mentioned, sell the same and shall hold the net monies to arise from such sale, and also the rents and profits thereof in the meantime upon the trusts declared of the same respectively by an indenture therein referred to, and being these presents. AND WHEREAS in further pursuance of the said agreement, the husband has, with the approbation of the wife, lately transferred the sum of £——, Two and a half per Cent. Consolidated Stock into the names of the trustees, to be held by them in trust for the husband until the said intended marriage, and after the solemnization thereof, upon the trusts hereinafter declared concerning the same. AND WHEREAS the said E. D. is possessed of or entitled to three bonds under the common seal of the mayor, aldermen, and burgesses of ——, dated the —— day of ——, and numbered ——, ——, and —— respectively, and in the penal sums of £——, £——, and £——, respectively, to secure the principal sums of £——, £——, and £—— respectively, with interest for the same respectively at the rate of £—— per cent. per annum, which said principal sums, with some interest thereon respectively, are now owing

Of assignment of leaseholds in trust for the husband until the marriage;

—and after in trust to sell;

—and to hold the sale monies on trusts after declared.

That the husband has transferred a sum of stock to the trustees in trust for himself till the marriage, and after on trusts after declared.

That wife's father is possessed of bonds.

PRECEDENT CXXXIV.

ON MARRIAGE, OF PROCEEDS OF SALE OF LEASEHOLDS AND STOCK SETTLED BY HUSBAND, AND BONDS SETTLED BY WIFE'S FATHER.

on the same bonds respectively. AND WHEREAS upon the treaty for the said marriage it was agreed that the said E. D. should assign the said principal sums of £——, £——, and £—— (*a*), and the interest for the same respectively, to the trustees, in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, the said E. D. AS SETTLOR, and with the approbation of the husband and the wife, doth hereby assign unto the trustees ALL THOSE three bonds under the common seal of the mayor, aldermen, and burgesses of ——, dated the —— day of ——, and numbered ——, ——, and —— respectively, and the said principal sums of £——, £——, and £——, now owing upon the same bonds respectively: and all interest due and to grow due thereon respectively; and the full benefit of the same bonds respectively (*b*) TO HOLD the said premises UNTO the trustees, IN TRUST for the said E. D., his executors and administrators, until the said intended marriage, and after the solemnization thereof, UPON THE TRUSTS hereinafter declared of the same. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreements, and for the consideration aforesaid, it is hereby agreed, that after the solemnization of the said intended marriage, the trustees, and the survivors and survivor of them, and the executors or administrators of such survivor, (which several persons, and other the trustees or trustee for the time being of these presents, are hereinafter included in the expression "the trustees,") shall either allow the said sum of £—— Two and a half

Of agreement for assignment of bond debts.

Witnesseth.

Assignment of bond debts.

Parcels.

Habendum.

In trust for settlor till the marriage, and after on trusts after declared.

Declaration of trust.

(*a*) The principal sums remaining owing on the bonds should be the sums here mentioned. They would usually be assigned by a separate deed, but the alterations for such a case can be easily made by the aid of Precedent CXIX., *supra*.

(*b*) As to the omission of a power of attorney, in assignments even of legal debts, see n. (*a*), at p. 354, *supra*.

per Cent. Consolidated Stock, and the said sums of £——, £——, and £——, or any of them, or any part or parts thereof respectively, to remain unaltered, or shall, with the consent of the husband and the wife, during their joint lives, and of the survivor of them during his or her life, and after the death of such survivor, at the discretion of the trustees, sell, call in, or convert into money the same or any of them, or any part or parts thereof respectively, and shall with such consent or at such discretion as aforesaid invest the monies produced thereby, and also the net monies produced by the sale of the said leasehold premises, in the names of the trustees, in any stocks, funds, shares, or securities which may, for the time being, be authorized by law for the investment of trust monies (*a*), and may with such consent or at such discretion as aforesaid, vary the said stocks, funds, shares, or securities, into or for any others so authorized; AND SHALL pay the income of the said Consolidated Stock, sums and net monies, and of the investments for the time being representing the same respectively, to the husband and his assigns during his life; AND AFTER his death if the wife shall survive him to the wife and her assigns during her life, but so that during her said intended coverture such reversionary life interest shall be and remain her separate property without power of anticipation; AND AFTER the death of the survivor of them the husband and the wife shall hold the said trust premises, and the income thereof; IN TRUST [*for the issue of the marriage as husband and wife, or the survivor, shall appoint: In default of appointment, for the children of the marriage; hotchpot, advancement clauses, supra,* pp. 469, 470]. AND IT IS hereby agreed.

Trusts as to investment, authorising any investment allowed by statute for trust monies.

Trust of income for husband for life;

—for wife for life (*b*).

After death of husband and wife.

Capital for issue of the marriage as husband and wife or survivor shall appoint.

(*a*) See more extensive powers of investment, *supra,* pp. 475—477.

(*b*) If, as is more usual, the first life interest in the property settled by the wife's father were given to her, the trusts during the lives of husband and wife would take the form given at p. 477.

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that, if there shall be no child of the said intended marriage, who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age, or marry, then, without prejudice to the trusts hereinbefore declared, the trustees shall hold the said Consolidated Stock, and the net monies produced by the sale of the said leasehold premises, and the investments for the time being representing the same respectively, and the income thereof respectively, or so much thereof respectively as shall not have become vested, or been applied under any of the trusts or powers herein contained or by statute implied from and after the death of the wife, and such default or failure of children as aforesaid, which shall last happen, IN TRUST for the husband absolutely; AND SHALL hold the said sums of £——, £——, and £——, and the investments for the time being representing the same, and the income thereof, or so much thereof respectively as shall not have become vested, or been applied, under any of the trusts or powers herein contained, or by statute implied, from and after the death of the husband and the wife, and such default or failure of children as aforesaid, which shall last happen, IN TRUST for such persons or purposes and in such manner as the wife shall when discovert by deed, or whether covert or discovert by will or codicil appoint, AND IN DEFAULT of and subject to any such appointment, IN TRUST for the said E. D. absolutely (*a*). AND IT IS HEREBY DECLARED that, until the said leasehold premises shall have been sold, the trustees shall pay and apply the net rents and profits of the same premises (after payment of the rent reserved by the said lease, and all rates, taxes, payments for insurance and repairs, and other outgoings) in the manner in which

Disposition in default of children entitled under preceding trusts.

As to the husband's property.

As to the sums settled by the wife's father.

Trust for application of rents until sale.

(*a*) As the wife in the event of her surviving the husband can under her power of appointment deal in any way she thinks fit with this reversion, it has been considered that the absolute trust for the wife, in that event, which was inserted in some former editions, may be omitted as superfluous.

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the income of the investments representing the net monies arising from a sale under the trust for sale in the hereinbefore recited indenture contained would be for the time being payable and applicable if the sale and investment aforesaid were actually made. PROVIDED ALWAYS, and it is hereby agreed, that after the solemnization of the said intended marriage the husband during his life, and after his death, if she shall survive him, the wife during her life, so long as he or she shall think fit, may occupy the said leasehold premises as a residence without paying any additional rent for the same, the husband or wife nevertheless paying the rent reserved by the said indenture of lease, and performing and observing the covenants by the lessee, and conditions therein contained, and keeping the trustees fully indemnified against all claims, demands, and liability in respect thereof. [*Power to apportion blended funds and to appoint new trustees and additional indemnities so far as required, ut supra*, pp. 483—486.] IN WITNESS, &c.

Proviso that house conveyed in trust for sale may be used as a residence (*a*).

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PRECEDENT CXXXV.

ON MARRIAGE, OF TWO FUNDS WITH LIFE INTERESTS DETERMINABLE ON REMARRIAGE.

SETTLEMENT *on* MARRIAGE *of* TWO FUNDS *belonging respectively to the* HUSBAND *and the* WIFE, EACH *of whom takes a* REVERSIONARY LIFE INTEREST *in the* OTHER'S *Fund* DETERMINABLE *on* REMARRIAGE (*b*).

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. [*intended husband*], of the first part, C. D., of, &c.,

Parties.

(*a*) This clause is not strictly necessary, because the parties might occupy the house as tenants of the trustees, and it is usually so arranged. The right of the trustees to indemnity is assumed to be provided for by general law, but a covenant by the husband to indemnify them (as in Precedent XXXII., *supra*), might be added.

(*b*) This limitation though not unfrequently proposed and accepted, is not to be recommended.

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[*intended wife*], of the second part, and E. F., of, &c., G. H., of, &c., and I. K., of, &c. [*trustees*] (hereinafter referred to as the trustees), of the third part. WHEREAS a marriage is intended to be solemnized between the said A. B. (hereinafter called the husband) and C. D. (hereinafter called the wife); AND WHEREAS, by virtue of the will dated the —— day of ——, 18—, and proved in the Principal Registry of Probate on the —— day of ——, 18—, of M. B., late of ——, Esq., deceased, the husband, as one of the children of the said testator who were living at his decease, or born in due time afterwards, is entitled in reversion expectant upon the death or future marriage of N. B., the widow of the said testator, and mother of the husband, to one equal fourth share, or some other share or shares in the residuary estate of the said testator, which now consists of or is represented by the securities specified in the first schedule hereto, and respectively standing in the names or under the control of L. M. and N. O. as the trustees of the said will, and in the income thereof, subject to the interest of the said N. B. in the same income whilst she continues the widow of the said testator. AND WHEREAS, upon the treaty for the said intended marriage, it was agreed that the sum of £——, part or to be raised out of the share or shares to which the husband is entitled as aforesaid in the residuary estate of the said M. B., and the securities constituting or representing the same should be assigned to the trustees in manner hereinafter appearing upon the trusts hereinafter declared concerning the same. AND WHEREAS the wife has, in pursuance of an agreement in that behalf entered into upon the treaty for the said intended marriage, and with the approbation of the husband, transferred into the names of the trustees the stocks belonging to her which are specified in the second schedule hereto, to the intent that the said stocks may be held in trust for the wife, her executors and administrators, until the said intended marriage, and after the

Recital of intended marriage;

—of husband's title to share in a reversionary fund under a will;

—of agreement by husband to assign to the trustees a sum of cash raisable out of his share;

—of transfer by wife to the trustees of stocks belonging to her.

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solemnization thereof upon the trusts hereinafter declared concerning the same. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, the husband AS SETTLOR, with the approbation of the wife, doth hereby assign unto the trustees ALL that sum of £——, part or to be raised out of ALL that one equal fourth share, or other the share or shares to which the husband is entitled as aforesaid, of and in the residuary estate of the said testator M. B., and of and in the securities from time to time, or at any time, constituting or representing the same, TOGETHER with a corresponding proportionate part of the income of the same share or other share or shares as from the death or future marriage of the said N. B., TO HOLD the said sum of £—— and premises hereinbefore assigned (subject to the aforesaid interest of the said N. B. in the income of the residuary estate of the said M. B. and of the securities constituting or representing the same), UNTO the trustees in trust for the husband, his executors and administrators until the said intended marriage, and after the solemnization thereof, upon the trusts hereinafter declared concerning the same. AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agreement, and in consideration of the said intended marriage, it is hereby declared that the trustees shall either allow the stocks specified in the second schedule hereto and (after the same shall have fallen into possession) all securities which shall be appropriated and transferred to them in or towards satisfaction of the said sum of £—— hereinbefore assigned to remain in the actual state of investment thereof respectively for the time being, or shall sell or call in, or otherwise convert into money, the same or any of them, or any part or parts thereof respectively, and shall invest the monies produced thereby, and also all monies which shall be paid to or received by them the trustees in or towards satisfaction of the said sum of

Witnesseth. Assignment by husband of sum of cash to be raised out of his share.

Habendum.

In trust for the husband until the marriage and afterwards on trusts declared.

Witnesseth also.

Declaration of trust of stocks in second schedule;

—and of securities and monies transferred in or towards satisfaction of the assigned sum.

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£—— in the names [*remainder of trusts as to investment, supra*, p. 476], and may from time to time vary such investments for others of any kind hereby authorized: PROVIDED ALWAYS, that no sale, calling in, or conversion or investment, or variation of investment, shall be made under the trusts and powers hereinbefore in that behalf contained (*a*) during the joint lives of the husband and the wife without their consent in writing, nor after the death of such one of them as shall first die, so far as regards any stocks, funds, shares, or securities, or monies, to the income whereof the survivor of them shall for the time being be entitled under the trusts in that behalf hereinafter declared, without his or her consent in writing:

Proviso as to consents required for investments and variations of investment.

Trust of income of husband's fund;

—for husband for life,

—and after his death for wife until death or remarriage,

And shall pay the income of the said sum of £—— hereinbefore assigned, and of the monies, stocks, funds, shares, and securities for the time being representing the same (hereinafter referred to as the husband's fund), unto the husband and his assigns during his life, and after his death (if the wife shall survive him) unto the wife until she shall die or marry again, but so that during her

(*a*) In lieu of the remainder of this clause it may be sometimes convenient to use the following form:—

"So far as regards the husband's fund, as hereinafter defined, without the respective consent in writing of the husband during his life and of the wife until her death or remarriage, and so far as regards the wife's fund as hereinafter defined, without the respective consent in writing of the wife during her life, and of the husband until his death or remarriage."

It may be observed that the words "the failure or determination of the interest hereby limited to him [her] in the income of that fund" will throughout the Precedent be appropriate instead of the references to death or second marriage, and should be used if these events are associated with other contingencies, such as bankruptcy, or failure of issue. See Precedents CXX. and CXXXII.

said intended coverture this contingent reversionary interest shall be and remain her separate property, without power of anticipation: And shall pay the income of the said stocks specified in the second schedule hereto, and of the monies, stocks, funds, shares, and securities for the time being representing the same (hereinafter referred to as the wife's fund) unto the wife during her life, but so that during her said intended coverture the same shall be for her separate use without power of anticipation: And after the death of the wife (if the husband shall survive her) shall pay the same income unto the husband and his assigns until he shall die or marry again: And shall stand possessed of the capital and income of the husband's fund after the death of the husband and the death or remarriage of the wife, and of the capital and income of the wife's fund, after the death of the wife and the death or remarriage of the husband, IN TRUST [*for the issue and children of the marriage, supra*, pp. 469, 470, *adding after the power of appointment to the survivor,* "except that if such survivor shall marry again, then the power lastly hereinbefore contained shall not be exerciseable as regards the fund of the other or the income thereof otherwise than by deed executed before such remarriage" (*a*)]. PROVIDED ALWAYS, that no child who or whose issue shall take any part of either the husband's fund or the wife's fund, under any appointment in pursuance of either of the powers in that behalf hereinbefore contained, shall, in default of appointment to the contrary, be entitled to any share of the unappointed part of the same fund without bringing the share appointed to him or her, or to his or her issue, into hotchpot (*b*). PROVIDED ALWAYS,

—and of the wife's funds,

—for wife for life,

—and after her death for the husband until death or remarriage.

Trusts of both funds after determination of prior trusts.

Hotchpot clause as to both funds.

Power of advancement.

(*a*) See note (*a*) on p. 491, *supra*.

(*b*) It will be observed that this clause has not a cross operation. If any fund is settled by reference, *e.g.*, under an agreement for settlement of after-acquired property of the wife, the words

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and it is hereby declared, that as to the husband's fund after the death of the husband, and the death or remarriage of the wife, or previously thereto, with the respective consent in writing of the husband during his life, and of the wife until her death or remarriage, and as to the wife's fund, after the death of the wife and the death or remarriage of the husband, or previously thereto, with the respective consent in writing of the wife during her life, and of the husband until his death or remarriage, the trustees may raise [*ut supra*, p. 470]. AND IT IS HEREBY DECLARED, that as to the income of the husband's fund, after the death of the husband and the death or remarriage of the wife, and as to the income of the wife's fund, after the death of the wife, and the death or remarriage of the husband, the trustees may apply the whole or such part as they shall think fit [*remainder of maintenance and accumulation clauses, ut supra*, p. 471, n.]. AND IT IS HEREBY DECLARED, that if there shall be no child of the said intended marriage, who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry under that age, then (subject and without prejudice to the trusts hereinbefore declared) the trustees shall hold the husband's fund and the income thereof, or so much thereof respectively as shall not have become vested or been applied under any of the trusts or powers hereinbefore contained [or herein by statute implied] after the death or

Maintenance clause (*a*).

Ultimate trusts of both funds.

"or any property hereby settled by reference to the trusts thereof," had better be inserted after the words "the wife's fund" and the words "or any power hereby given by reference thereto" after the words "hereinbefore contained" and the words "or any property hereby settled by reference to the trusts thereof" after the words "the same fund." See p. 478, *supra*, n. (*a*), and Davidson's Prec. Con., 3rd ed. vol. iii. pp. 170, 171.

(*a*) This clause may (if desired) be omitted with safety; see p. 471, *supra*, n. (*b*).

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remarriage of the wife, and such default or failure of children, as aforesaid, which shall last happen, IN TRUST for the husband, his executors, administrators, and assigns, and shall hold the wife's fund and the income thereof, or so much thereof respectively as shall not have become vested or been applied under any of the trusts or powers hereinbefore contained [or herein by statute implied], after the death or remarriage of the husband and such default or failure of children, as aforesaid, which shall last happen [*in trust for the appointees of the wife and for wife surviving or her next of kin, ut supra,* p. 472]. PROVIDED ALWAYS, and it is hereby declared, that the husband and the wife, at any time or times during their joint lives, and after the death of the wife, if the husband shall survive her, the husband at any time or times during his life may by deed, with or without power of revocation and new appointment, appoint that any sum or sums, not exceeding altogether (whether under a joint appointment or a sole appointment, or under both) the sum of £——, shall be raised out of the husband's fund, and shall be paid to themselves or himself, or to any other persons or person, or for any purposes which they or he may think fit, and the trustees shall raise and pay or apply such sum or sums accordingly. PROVIDED ALWAYS, and it is hereby declared, that the survivor of the husband and the wife, at any time or times after the death of the other of them, and either in contemplation of or after any future marriage of such survivor, may by deed, with or without power of revocation and new appointment, or by will or codicil, appoint that any part or parts, not exceeding altogether one equal moiety of the fund of the appointor (exclusive [inclusive] in the case of the husband of any sum or sums previously appointed under the power in that behalf lastly hereinbefore contained), shall after the death of the appointor be held by the trustees upon trust to pay all or any part of the income thereof to any person whom the appointor

Power for husband and wife or for husband surviving to appoint that a specified sum shall be raised for any purpose out of the husband's fund.

Power for survivor of husband and wife to make a settlement on future marriage.

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may marry after the death of his or her now intended wife or husband, as the case may be [*remainder of power to make settlement on future marriage, and ancillary clauses*, pp. 492—494, *supra*, substituting "appointor" *for* "wife"]. PROVIDED ALWAYS, and it is hereby declared, that the trustees may during the lives of the husband and the wife, upon their request in writing, raise out of either the husband's fund or the wife's fund, and may during the life of the survivor of them, upon his or her request in writing, raise out of his or her fund any sum or sums not exceeding altogether the sum of £——, and upon the like request may apply the same in the purchase [*remainder of power to invest in the purchase of land and ancillary clauses*, pp. 479—481, *supra*. *Powers of settling questions and of appointing new trustees and additional indemnities, and devolution clause, &c., as required*, pp. 483—486, *supra*]. IN WITNESS, &c.

Power to invest in the purchase of land.

THE FIRST SCHEDULE above referred to.

THE SECOND SCHEDULE above referred to.

CXXXVI.

PRECEDENT CXXXVI.

VOLUNTARY, OF REAL AND PERSONAL ESTATE.

VOLUNTARY SETTLEMENT *of* REAL *and* PERSONAL ESTATE *for the benefit of the* SETTLOR, *his* WIFE, CHILDREN *and* GRANDCHILDREN (*a*); POWER *of* REVOCATION.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. [*settlor*], of the one part, and C. D., of, &c., and

Parties.

(*a*) As to the validity of, and consideration for, voluntary settlements, see Dav. Prec. Conv. 3rd ed. vol. iii. pp. 668 to 699; Dart, V. & P. 7th ed. vol. ii. p. 927 *et seq.* It is not necessary that such a settlement should contain a power of revocation, or even a general power of disposition on failure of the immediate or principal purposes of the deed, but the settlor's attention should be

E. F., of, &c. [*trustees*], of the other part, WITNESSETH, that, in consideration of the natural love and affection of the said A. B. for his wife, and issue hereinafter mentioned, and for divers other good considerations, the said A. B. doth hereby grant unto the said C. D. and E. F. and their heirs [*parcels*—pp. 134, 138, &c.], TO HOLD the said premises unto the said C. D. and E. F. and their heirs, TO THE USE of the said A. B. and his assigns, during his life without impeachment of waste; AND, after his

Witnesseth. Conveyance. Habendum.

To the use of the settlor for life.

particularly drawn to the fact that a power of either description might be reserved to him. See *James* v. *Couchman*, 29 Ch. D. 212; the actual decision in which case must, however, be regarded as of doubtful authority; see *Tucker* v. *Bennett*, 38 Ch. D. 1. As regards settlements of leaseholds, *Price* v. *Jenkins* (4 Ch. D. 483; 5 Ch. D. 619), deciding that such a settlement cannot be voluntary, is still followed (see *Harris* v. *Tubb*, 42 Ch. D. 79), except in cases (as in *Re Ridler*, 22 Ch. D. 74) arising under 13 Eliz. c. 5. A voluntary settlement is, under sect. 47 of the Bankruptcy Act, 1883, void against the settlor's trustee in bankruptcy in the event of the settlor becoming bankrupt within two years after the date of the settlement; but after some conflict of authority it has now been determined that the effect of the section is to make the settlement void, not *ab initio*, but only from the time when the trustee's title accrues, so that a *bonâ fide* purchaser for value of the property before that time acquires a good title as against the trustee, *Re Carter & Kenderdine's Contract*, [1897] 1 Ch. 776; overruling *Re Briggs & Spicer*, [1891] 2 Ch. 127. The doctrine by which a voluntary conveyance was avoided as against a subsequent purchaser for value, upon the ground that it ought to be treated as fraudulent within the statute 27 Eliz. c. 4, is abrogated by the Voluntary Conveyances Act, 1893 (56 & 57 Vict. c. 21). A settlement of this nature is not within the compulsory provisions of the Land Transfer Act, 1897; but where the land is already registered the settlement should be accompanied by a transfer in the prescribed form, and the requisite restrictions or inhibitions entered on the register. See the observations, *supra*, p. 100. As to the stamp duty on voluntary settlements, see now the Finance (1909-10) Act, 1910, s. 74; and as to the liability to estate duty on the death of the settlor, the Finance Act, 1894, s. 2 (1) (c), and the Finance (1909-10) Act, 1910, s. 59. The stamp must apparently in every case be adjudicated: see sect. 74 (2) of the last-mentioned Act.

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death, TO THE USE of G. B., his wife, and her assigns, during her life, without impeachment of waste; AND, after the death of the said G. B., TO THE USE of the said C. D., and E. F., their heirs and assigns, UPON TRUST that the said C. D. and E. F., or the survivor of them, or the executors or administrators of such survivor (which several persons, and other the trustees or trustee for the time being of these presents, are hereby declared to be trustees hereof for purposes of the Settled Land Acts, 1882 to 1890 (*a*), and are hereinafter referred to as "the trustees"), shall sell the said premises (*b*); AND SHALL hold the monies to arise from every such sale (after payment thereout of all expenses) upon the trusts following: (that is to say,) AS TO three sixth parts thereof, UPON TRUST to pay the same equally among such of the children hereinafter named of the said A. B., viz., H. B., J. B., and K. B., as shall be living at the death of the survivor of the said A. B. and G. B., or shall be then dead, leaving issue then living, the share or shares of such of them as shall be then dead leaving issue then living to be paid to his, her, or their respective executors or administrators, as part of his, her, or their respective personal estate; AND AS TO one other sixth part thereof UPON TRUST to invest the same, in the names of the trustees in any of the public stocks or funds of the United Kingdom (but in no other investment) (*c*), and to accumulate the income thereof in the way of compound interest, by similarly investing the same and the resulting income thereof, until the same shall become payable as hereinafter mentioned; (that is to say,) if L. B., the son of the said A. B., or any issue of the said L. B. (he being then dead) shall claim, within fifteen years from the date of these presents,

Remainder to his wife for life.

Remainder to trustees, upon trust to sell,

and hold the monies produced upon trust,

as to three-sixths, for certain children of the settlor;

—as to one-sixth, to invest and accumulate, until claimed by one of the settlor's sons or his issue within fifteen years;

(*a*) See *infra*, p. 573, n. (*a*), and the subsequent notes to Precedent CXXXIX.

(*b*) See *supra*, p. 528, n. (*c*).

(*c*) See p. 561, n. (*a*).

then to pay or transfer the same, and the accumulations thereof, to the said L. B., or (he being dead) to his issue then living, such issue, if more than one, to take in equal shares, per stirpes; but if the said L. B., or any issue of the said L. B., shall not claim within such fifteen years, or if, before the expiration thereof, it shall be ascertained that the said L. B. is dead, and that no issue of the said L. B. is then living, then, immediately upon the expiration of the said fifteen years, or upon the death of the said L. B. and the failure of his issue being so ascertained, whichever shall first happen, the trustees shall hold the last-mentioned sixth part of the said net purchase-monies, and the accumulations thereof, upon the trusts hereinbefore declared of the first-mentioned three sixth parts; AND AS TO the remaining two sixth parts of the said net purchase-monies, UPON TRUST to pay the same equally among such of the persons hereinafter named, viz., M. H., N. H., and O. H., the children of P. H., deceased, who was a daughter of the said A. B., as shall be living at the death of the survivor of the said A. B. and G. B., or shall be then dead leaving issue then living, the share or shares of such of them as shall be then dead leaving issue then living to be paid to his, her, or their respective executors or administrators, as part of his, her, or their respective personal estate. AND IT IS HEREBY DECLARED, that, after the death of the said A. B. and G. B., the trustees may at any time or times, before all the said premises shall have been sold, demise all or any of the said premises [*remainder of leasing power as at* p. 563, *infra*, *or as in note at* p. 529, *supra*]. AND IT IS HEREBY DECLARED, that until all the said premises shall be sold, the trustees shall pay and apply the net income thereof, or of the unsold part thereof (after payment thereout of all taxes, rates, expenses of repairs and insurance, and

—as to remaining two-sixths, to divide amongst the settlor's grandchildren.

Power to lease (*a*).

Declaration of trust of rents and profits till a sale.

(*a*) See p. 529, n. (*a*), *supra*. The tenants for life will have powers of leasing under the Settled Land Act, 1882.

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other outgoings), in the manner in which the net monies produced by the sale thereof, or the stocks or funds in or upon which any share or shares thereof are hereinbefore directed or authorised to be invested, or the income thereof, would have been payable or applicable, if such premises had been sold and such investments made.

Witnesseth, secondly.

AND THIS INDENTURE ALSO WITNESSETH, that, in consideration of the natural love and affection of the said A. B. for his said wife, and for his daughters hereinafter named, he, the said A. B., doth hereby assign unto the said C. D. and E. F., their executors, administrators, and assigns,

Assignment of chattels to the trustees.

ALL his pictures, books, plate, plated articles, linen, china, household goods, furniture, chattels, and effects (other than money or securities for money),

Habendum upon trusts for husband and wife during their lives.

TO HOLD the same unto the said C. D. and E. F., their executors, administrators, and assigns, UPON TRUST to permit the said A. B. during his life, and after his death the said G. B. during her life, to use the same; and after the death of the survivor of the said A. B. and G. B., UPON TRUST to divide the same equally between the said H. B. and K. B., their executors, administrators, or assigns (*a*). [*Power to appoint new trustees, and additional indemnities, so far as required, ut supra*, pp. 483—486.]

Power of revocation.

AND IT IS HEREBY DECLARED, that the said A. B. may at any time or times by deed or will or codicil either alter or absolutely revoke all or any of the uses, trusts, and estates hereinbefore limited and declared, and by the same or any other deed or by will or codicil limit and declare

(*a*) This deed (not being on marriage) will not come within the exception of "marriage settlements" in sect. 4 of the Bills of Sale Act, 1878 (see as to the similar exception in the former Act, *Fowler* v. *Foster*, 28 L. J. Q. B. 210; *Ashton* v. *Blackshaw*, L. R. 9 Eq. 510), and will therefore require registration as a bill of sale (*Swift* v. *Pannell*, 24 Ch. D. 210; *Reeves* v. *Barlow*, 11 Q. B. D. 610) to escape the operation of sect. 8 of the Act of 1878. See as to such registration and bills of sale generally, the notes to Precedent LXXVII., *supra*, p. 334.

such new or other uses, trusts, and estates of or concerning all or any of the said premises hereinbefore granted and assigned respectively as he shall think fit (*a*). In witness, &c.

Precedent CXXXVI. — voluntary, of real and personal estate.

THE SCHEDULE above referred to.

CXXXVII.

Grant *by a* Tenant in Tail *of a* Rentcharge *by way of* Jointure, *a* Term *being created for securing the* Rentcharge (*b*).

Precedent CXXXVII. — on marriage, grant of jointure rentcharge.

THIS INDENTURE, made, &c., between A. B., of, &c. [*intended husband*], of the first part, C. B., of, &c. Parties.

(*a*) Of course covenants for title have never been inserted in a voluntary settlement of this nature, and it should be observed that the covenants (A.) and (B.) in sub-sect. (1) of sect. 7 of the Conv. and Law of Property Act, 1881 (App. IV., *infra*), are not applicable to voluntary conveyances. If therefore covenants for title are desired, either they must be entered into expressly as before the Act, or a declaration must be added that covenants on the part of the grantor or assignor shall be deemed to be implied to the same effect in the same manner and with the same consequences in all respects as if the conveyance had been for valuable consideration, and he had been expressed to convey as beneficial owner. On the other hand, the covenant (E.) applies in any conveyance by way of settlement; and the grantor or assignor can therefore convey as settlor if desired. But there may be some doubt as to the legal effect of such covenants in a voluntary conveyance, and clearly they could not be specifically enforced.

(*b*) This Precedent is introduced as an example of a partial disposition by a tenant in tail in remainder under the powers conferred by the Act 3 & 4 Wm. 4, c. 74, and of a grant of a rentcharge without a settlement of the estate. The more usual course would be wholly to bar the entail and resettle the estate; but circumstances occasionally render such a settlement as that in the text desirable. The omission of the parts referring to the barring of

PRECEDENT CXXXVII.

ON MARRIAGE, GRANT OF JOINTURE RENTCHARGE.

Witnesseth.

[*intended husband's father*], of the second part, D. E., of, &c. [*intended wife*], of the third part, and F. G., of, &c., H. I., of, &c., and K. L., of, &c. [*trustees*], of the fourth part, WITNESSETH that, in consideration of a marriage intended to be solemnized between the said A. B. and D. E., and in pursuance of an agreement entered into on the treaty for the same, HE the said A. B., AS BENEFICIAL OWNER, with the consent of the said C. B., as the protector of the settlement of the hereditaments hereby charged (testified by his being a party to, and executing these presents), doth hereby grant UNTO the said D. E. and her assigns, that if the said intended marriage shall be solemnized, and if she shall survive the said A. B. and C. B., she the said D. E. and her assigns, may from and after the death of the survivor of them the said A. B. and C. B., receive during her life the yearly rentcharge of £——, to be charged upon and payable (*a*) out of ALL THE manors, messuages, farms, lands, and hereditaments, specified in the schedule hereto, and to be payable by equal quarterly payments, without any deduction, and the first such quarterly payment to be made within three calendar months after the death of the survivor of them the said A. B. and C. B. (*b*). [AND THIS INDENTURE ALSO WITNESSETH that in consideration of the said intended marriage, and in further pursuance of the said agreement, he the said A. B., with the consent of the said C. B. (testified as aforesaid), doth hereby grant, demise, and dispose of unto the said F. G., H. I., and

Grant, with consent of protector,

—of yearly rentcharge.

Charged on hereditaments in the schedule.

Witnesseth further.

Demise to trustees of premises charged.

the estate tail would render this Precedent applicable to a similar settlement by a tenant in fee simple.

(*a*) See p. 522, n. (*a*).

(*b*) The powers of distress and entry formerly usual are supplied by sect. 44 of the Conv. Act, 1881 (App. IV., *infra*). The limitation of a term to trustees for raising the jointure has been retained for use, when desired for that or any other purpose, but the jointress will have power to limit such a term if necessary under the same section, and the limitation should, as a rule, be omitted.

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K. L., their executors, administrators, and assigns, ALL THE manors, messuages, farms, lands, and hereditaments specified in the said schedule hereto, To HOLD the premises, SUBJECT to the uses and estates which under or by virtue of the subsisting settlement or settlements of the said premises are subsisting or capable of taking effect, prior to the estate in tail of the said A. B. in the same premises and to the powers annexed to such prior uses and estates, so far as the same are now subsisting or capable of taking effect, AND also subject to the said yearly rentcharge of £——, and the powers and remedies for enforcing payment thereof, UNTO the said F. G., H. I., and K. L., their executors, administrators, and assigns, for the term of —— years, to commence from the death of the survivor of the said A. B. and C. B. without impeachment of waste, UPON TRUST that the said F. G., H. I., and K. L., their executors and administrators, shall permit the person or persons entitled in reversion immediately expectant on the said term of —— years, to receive the rents and profits of the said premises, until default shall be made for sixty days in payment of the said rentcharge of £— —, or some part thereof, at the times and in manner aforesaid; AND if any part of the said rentcharge shall be unpaid for sixty days after any of the times hereinbefore appointed for payment thereof, then and so often shall, by and out of the rents and profits of the same premises, or by mortgage thereof, or by the sale of timber or minerals, or by all or any of the ways aforesaid, or by any other reasonable ways or means, raise and pay the said rentcharge, and all arrears thereof, and all costs, damages, and expenses incurred by reason of the non-payment thereof, AND shall pay the surplus of the monies to be raised as aforesaid, to the person or persons entitled to the reversion immediately expectant on the same term; AND subject to the trusts hereinbefore declared, shall permit the rents and profits of the same premises to be received by the person or persons entitled

Parcels.

Habendum,

—subject to prior uses;

—and to the rentcharge.

For a term.

Upon trusts to secure the rentcharge.

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Mortgagees not to see to propriety of mortgages.

as aforesaid: AND no mortgagee advancing money upon any mortgage purporting to be made under any of the trusts hereinbefore declared, shall be bound to see that the money raised is wanted, or that no more than is wanted is raised, or otherwise as to the propriety of such mortgage (*a*) [*power to appoint new trustees to be exerciseable by D. E. alone, ut supra*, p. 472].] IN WITNESS, &c. (*b*).

THE SCHEDULE above referred to.

CXXXVIII.

PRECEDENT CXXXVIII.

ON MARRIAGE, OF REAL ESTATE, THE CHILDREN TAKING AS TENANTS IN COMMON IN TAIL.

SETTLEMENT, *on* MARRIAGE, *of* REAL ESTATE (FREEHOLD *and* COPYHOLD) *upon the* HUSBAND *and* WIFE *successively for life, with* REMAINDER *to the* ISSUE *of the marriage, as the Husband and Wife, or the Survivor, shall* APPOINT, *and in Default, to the* CHILDREN *in equal Shares in* TAIL *as* TENANTS IN COMMON *with* CROSS REMAINDERS. POWERS *of* MANAGEMENT *during* MINORITIES, *of* LEASING, *and of* SALE *and* EXCHANGE (*c*).

Parties.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*intended husband*], of the first part, B., of, &c. [*intended*

(*a*) As to the propriety or advantage of inserting here a declaration to bar dower, see Dav. Prec. Conv. vol. iii. 3rd ed. p. 851, n. (*f*).

(*b*) This deed must be enrolled in the Central Office within six calendar months after its execution by A. B. If the land is registered the jointress must be protected by means of a caution or restriction. See *supra*, pp. 104—106.

(*c*) When real estate is desired to be settled upon the children as the parents shall appoint, and, in default, equally, the best way is to convey the estate to the trustees, upon trust to sell and hold the money produced upon trusts to be declared by a settlement of even date. See Precedents CXXXI. and CXXXII., *supra*. For when real estate is settled, as in the Precedent in the text, the ordinary provisions for hotchpot and advancement cannot be applied,

wife], of the second part, and C., of, &c., and D., of, &c. [*trustees*] (hereinafter called the trustees), of the third part, WITNESSETH, that, in consideration of a marriage intended to be shortly solemnized between the said A. and B., he the said A. as BENEFICIAL OWNER (*a*), with the approbation of the said B., doth hereby grant unto the trustees, and their heirs [*parcels*, pp. 134, 138, &c.], TO HOLD the premises UNTO the trustees and their heirs, TO THE USE of the said A. and his heirs until the intended marriage: AND AFTER the solemnization thereof TO THE USE of the said A. and his assigns, during his life, without impeachment of waste (*b*); AND AFTER his death TO THE USE of the said B. during her life without impeachment of waste [and so that during her said intended coverture, such reversionary life estate shall be and remain her separate property, without power of anticipation]; AND AFTER the death of the said B., TO THE USE of all or such one or more of the issue of the said intended marriage (*c*), for such estates or estate [if more than one in such shares and with and subject to such limitations and remainders over and charges for the

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Witnesseth.

Conveyance of freeholds.

Habendum.

To the use of settlor till marriage;

—after marriage to use of husband for life;

wife for life;

—issue of marriage as husband and wife, or survivor shall appoint;

and there is inconvenience in applying the statutory provisions for maintenance and accumulation, and in dealing with the estate when it becomes divisible among the children. And it is evident that the effect of a settlement in trust for sale (such sale, during the lives of the tenants for life, to be with their consent), and a declaration that the rents till a sale shall go as the income of the funds would go, is tantamount to the settlement of the real estate in specie, with the ordinary power of sale. The precedent in the text, however, is given because a settlement of this kind is sometimes insisted upon.

(*a*) The husband might convey as settlor only, in which case only a covenant for further assurance would be implied under sect. 7 of the Conv. Act, 1881 (App. IV. *infra*). But it has been usual to make a settlor under such circumstances covenant for title as on a sale. See n. (*a*), p. 553, *supra*.

(*b*) See as to the cutting and sale of timber by a tenant for life impeachable for waste, sect. 35 of the Settled Land Act, 1882 (App. VII., *infra*).

(*c*) See p. 469, *supra*, and n. (*c*) on that page.

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benefit of the said issue or some or one of them and such provisions for their respective maintenance and education and advancement or benefit at the discretion of any trustee or trustees or person or persons to be named or referred to in that behalf and generally] and in such manner as the said A. and B. shall by deed appoint; AND IN DEFAULT of, and subject to any such appointment, as the survivor of the said A. and B. shall by deed or will or codicil appoint; AND IN DEFAULT of, and subject to any such appointment, TO THE USE of the child or children (as the case may be) of the said intended marriage in tail, such children, if more than one, to take as tenants in common, in equal shares, with cross remainders in tail between or among them (*a*), with remainder TO THE USE of the said A., his heirs and assigns. AND IT IS HEREBY DECLARED, that, after the death of the said A. and B., so long as any child of the said intended marriage shall be under the age of twenty-one years, the trustees shall

—in default of appointment, children as tenants in common in tail, with cross-remainders and ultimate remainder.

Provision for the application of the rents and profits during the minorities of the children (*b*).

(*a*) This form of limitation to tenants in common in tail with cross remainders, which is slightly modified from the form long used in wills, and which by virtue of sect. 51 of the Conv. Act, 1881, is effectual for the purpose in deeds, is adopted in the present Precedent as being shorter, simpler, and more intelligible than the form formerly in use for the purpose in deeds, which is subjoined:

"TO THE USE of all the children of the said intended marriage, and the heirs of their respective bodies, in equal shares, as tenants in common; AND IF and so often as any such child shall die without issue, then, as well as to his or her original share, as also to the share or shares that shall have survived or accrued to him or her, or to the heirs of his or her body, TO THE USE of the others of such children, and the heirs of their respective bodies, in equal shares, as tenants in common; AND IF all such children but one shall die without issue, or there shall be but one child of the said intended marriage, then, as to the entirety of the said premises, TO THE USE of such one or only child, and the heirs of his or her body."

(*b*) This clause is retained because it is applicable to the entirety during the minority of any of the children, while the corresponding

receive the rents and profits of and manage the said premises, and may fell timber for repairs or sale or other-

statutory power conferred by sect. 42 of the Conv. Act, 1881, is framed so as to apply to undivided shares severally during the respective minorities only of the persons entitled to such shares. If the statutory form is preferred, the following clause should be inserted in lieu of that in the text:

Provisions as to application of income during minorities, by virtue of s. 42 of the Conv. Act, 1881.

"AND IT IS HEREBY DECLARED that the powers exerciseable by virtue of the Conveyancing and Law of Property Act, 1881, s. 42, during the minority or minority and discoverture (as the case may be), of any person who would but for that section be beneficially entitled to the possession of the said premises, or any undivided share thereof, shall be exerciseable by the trustees [and during so long as any child of the said intended marriage shall be under the age of twenty-one years, and being a daughter shall not have married, shall be exerciseable over the entirety of the hereditaments for the time being subject to the then subsisting uses of these presents, notwithstanding that any other child or children of the said intended marriage may then have attained that age, or being a daughter or daughters have married, but so that the trustees shall pay to such of the children of the said intended marriage, as shall for the time being have attained the age of twenty-one years, or being a daughter or daughters have married, his, her, or their share or respective shares of the net income of the same hereditaments], and in case any such person being tenant in tail by purchase under these presents dies while an infant, and being a woman without having been married, the accumulated fund arising during his or her minority, or minority and discoverture (as the case may be) from the income of the said premises or of such undivided share thereof, and from investments of income thereof, shall (subject to the power in the said section contained of applying accumulations as income) be held upon the

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wise, and may accept surrenders from, and make allowances to, and arrangements with tenants and others, and do all such other things as may to them seem expedient for the due management thereof; AND, after deducting the expenses of management, repairs, insurance, and other outgoings [*if there be or can be any charge on the premises, add,* "and keeping down any annual sum or sums, and the interest on any principal sum or sums charged on the premises"], shall pay to such of the children of the said intended marriage as shall for the time being have attained the age of twenty-one years, his, her, or their

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trusts and with and subject to the powers and provisions, applicable to the monies arising from sales under the power of sale hereinafter contained, and stocks, funds, and securities purchased therewith."

The section referred to will be found in App. IV., *infra*, and is commented on, *supra*, p. 59. It extends, it will be noticed, to persons taking by descent as well as to persons taking by purchase, and in this respect is more beneficial than the common form. The words in brackets will be omitted, if it is not desired to make these statutory powers extend to the entirety during the minority of any child. And if the Settled Land Act, 1882 (App. VII., *infra*), be relied on (as to which see n. (*b*) on p. 573, *infra*), for the words "be held upon, &c.," should be substituted the words "be applied in the purchase of hereditaments in England or Wales for an estate in fee simple to be made subject to the settlement hereby created of the said premises or of such undivided share thereof as the case may be, in the manner prescribed by sect. 24 of the Settled Land Act, 1882, with reference to land acquired by purchase as in that Act mentioned, but without prejudice to the interim application thereof as capital money arising under that Act."

See as to this form the note on sect. 22 (5) of that Act; and compare another mode of referential trust illustrated in the form, *infra*, of a will of real and personal estate creating strict settlement.

share or respective shares of the said net rents and profits; AND shall, out of the share thereof of every or any of the said children who shall for the time being be under the age of twenty-one years, pay the whole, or such sum or sums as the trustees shall think proper, for or towards the maintenance or education of every such minor (either directly or by payment to his or her guardian or guardians, to be applied by such guardian or guardians without accounting to the trustees), AND shall accumulate the residue (if any) of every or any such share of the said rents and profits in the way of compound interest, by investing the same and all the resulting income thereof, in their names, in or upon any stocks, funds, or securities in or upon which capital money arising under the Settled Land Act, 1882, is by law authorised to be invested (*a*), with power to resort to such accumulations respectively at any time or times during the minority of the child from

(*a*) In some former editions the investments were limited to government or real securities, and (as in other cases where the range of investment was similarly restricted) the words "but in no other mode of investment," were introduced with reference to the provisions of sect. 32 (repealed) of the Act 22 & 23 Vict. c. 35, and sect. 11 (repealed) of the Act 23 & 24 Vict. c. 38. It was held in *Re Wedderburn's Trusts*, 9 Ch. D. 112, that even such restrictive words did not exclude any investments authorised under the latter Act. The Trustee Act, 1893, however, authorises a trustee to invest in the securities mentioned in that Act only unless forbidden, and *Re Wedderburn's Trusts* has been disapproved in *Ovey* v. *Ovey*, [1900] 2 Ch. 524. In the present case, the accumulations will, by virtue of sect. 33 of the Settled Land Act, 1882 (App. VII., *infra*), be subject to the provisions of sub-sect. (1) of sect. 21, as to the investment of capital money arising under that Act, and it seems impossible to exclude any of the investments expressly authorised by that sub-section. Those authorised only by the Trustee Act, 1893, might (it is thought) be excluded, and if that be desired the words "other than and except stocks, funds, or securities authorised only by the Trustee Act, 1893," or "other than and except Irish stocks, funds, or securities authorised only by the Trustee Act, 1893," might be added here.

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whose share the same respectively shall have arisen, for the maintenance or education of such child; AND, subject and without prejudice to the provision for resorting to the said accumulations for maintenance and education as aforesaid, shall hold all the said residue of every or any such share of the said rents and profits, and the stocks, funds, and securities, in or upon which the same may be invested, upon such trusts as the same would be held upon if the same were monies arising from sales under the power of sale hereinafter contained, or stocks, funds, or securities purchased therewith (*a*). PROVIDED ALWAYS (*b*), that after the death of the said A. and B., the trustees

Power of leasing.

(*a*) See the variation in n. (*b*), *supra*, p. 558.

(*b*) See p. 574, n. (*a*), as to the omission of express powers of leasing, and of sale and exchange, where the statutory powers under the Settled Land Act, 1882 (App. VII., *infra*), will fully supply their place. These powers may be incorporated, if desired, in lieu of those in the text, according to the forms given in that Precedent. But in a settlement like that in the present Precedent, where the estate is limited to the children as tenants in common, it may still be convenient that express powers (carrying with them, it should be noticed by virtue of sect. 2 (8), the statutory powers) should in some cases be given to the trustees, in order to enable them to deal with the entirety of the estate while any child is under age, since the statutory powers will, after the deaths of the tenants for life, and after any one child has attained majority, enable the trustees to deal only with the share or shares of any infant children or child. As the tenants for life will have, under the Act, a larger power of leasing than is here given to the trustees, it seems useless to make this express leasing power exerciseable by a tenant for life.

It may be observed that in a settlement where the children take estates in fee contingent on attaining majority, the insertion of such express powers seems to be still necessary, because the statutory powers would not in that case enable the trustees, after the deaths of the tenants for life, to deal with the share of any child under age, such case not coming within either sect. 59 or sect. 60 of the Act, since such a child is neither entitled in possession, nor a person who would, if of full age, have the powers of a tenant for life under the Act.

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during the minority of any child of the said intended marriage, may by deed appoint by way of lease all or any of the said premises, for any term of years absolute or determinable, not exceeding [for agricultural or occupation purposes] twenty-one years [or for building or repairing purposes, ninety-nine years], to take effect in possession or within six calendar months from the date of the appointment, so as there be reserved the best yearly rent that can be reasonably gotten without taking any premium, [BUT in the case of building or repairing leases, any rent smaller than the rent to be ultimately payable may be reserved during the first five years] (*a*): PROVIDED ALSO (*b*), that the trustees may at any time or times during the life of the said A., with his consent in writing, and after his death during the life of the said B., with her consent in writing, and after the death of the said A. and B., during the minority of any child of the said intended marriage, at the discretion of the trustees (but subject to any lease which may have been granted under the power hereinbefore contained), dispose of, either

Power of sale and exchange.

(*a*) The above is a short form of the power of granting leases for twenty-one years and building or repairing leases for ninety-nine years hitherto usually given. If the power is to be restricted to leases for twenty-one years, the words in brackets will be omitted. A power to grant mining leases may be added, if the estate contains minerals, though probably in most cases it will be thought sufficient to rely on the statutory power for the grant of any mining lease, if required.

If it be desired to give the trustees the full leasing powers, which tenants for life will have under the Act, this clause, after the word "marriage," should proceed as follows:—"may exercise, in respect of the entirety of all or any of the said premises, all such powers of, or with reference to, leasing, as a tenant for life thereof might exercise under sects. 6 to 13, both inclusive, of the Settled Land Act, 1882, and the Settled Land Acts, 1889 and 1890."

(*b*) See p. 562, n. (*a*), *supra*.

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by way of sale, or in exchange for other hereditaments in England or Wales, all or any of the said premises, upon such terms and under such conditions as the trustees shall think fit, and may revoke the uses, trusts, and powers then subsisting in or of the hereditaments so sold or disposed of in exchange, and appoint the same to such uses and in such manner as shall be expedient to effectuate such sale or exchange. AND IT IS HEREBY DECLARED, that the trustees shall, with such consent or at such discretion as aforesaid, lay out the money received upon any sale or for equality of exchange in the purchase of freehold or copyhold hereditaments of inheritance (*a*) in England or Wales, or in purchasing the enfranchisement of any copyhold hereditaments so purchased, or for the time being subject to the uses or trusts of these presents, and shall settle or cause the same to be settled, to the uses, upon the trusts, and subject to the powers hereby limited, as far as the deaths of parties and other intervening circumstances will permit. AND IT IS HEREBY FURTHER DECLARED, that, until the money to be received upon any sale or for equality of exchange shall be laid out as aforesaid, the trustees may, with such consent or at such discretion as aforesaid, invest the same in their names in any of the stocks, funds, or securities in or upon which capital money arising under the Settled Land Act, 1882, is by law authorised to be invested (*b*), and vary the same, if and when they shall think fit; AND THAT the income from such investments shall be paid and applied in the same manner as the rents and profits of the hereditaments to be purchased therewith as aforesaid would be

Monies arising under the power of sale and exchange to be laid out in the purchase of lands, to be settled to the uses of the settlement.

And, till a purchase, to be invested in the funds or upon securities.

(*a*) It is common to extend the power of purchase to copyholds for lives, and leaseholds for lives and years; but as this is now of little use except as regards leaseholds for long terms of years, and requires additional trusts for settlement, and, except as regards leaseholds for long terms of years, for renewal, it is omitted when brevity is desired.

(*b*) See p. 561, n. (*a*), *supra*.

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payable or applicable, in case such purchase and settlement as aforesaid were then actually made (*a*). AND THIS INDENTURE ALSO WITNESSETH, that, for the consideration aforesaid, he the said A., AS BENEFICIAL OWNER, with the approbation of the said B., doth hereby covenant with the trustees, that, in case the said intended marriage shall be solemnized, he the said A., or his heirs, will forthwith, at his or their own cost, effectually surrender into the hands of the lord of the manor of ——, in the county of ——, according to the custom thereof, ALL THOSE, &c. [*parcels, supra*, p. 212], TO THE USE of the trustees, their heirs and assigns, according to the custom of the said manor, by and under the accustomed rents, fines, suits, and services, and upon such trusts, and subject to such powers, as shall as nearly correspond with the uses, trusts, and powers hereinbefore limited and contained of the said premises hereinbefore granted, as the different qualities of the estates and the rules of law and equity will permit (*b*). AND IT IS HEREBY AGREED that the power of appointing a new trustee or new trustees of these presents shall be exerciseable by the said A. and B. during their joint lives, and by the survivor of them during his or her life, and that (in addition to the ordinary powers, indemnities, and right to reimbursement by law given to trustees) the trustees

Witnesseth, secondly.

Covenant to surrender copyholds.

To the use of the trustees upon trusts to correspond with the uses of the freeholds.

Power to appoint new trustees;

—and additional indemnities to trustees.

(*a*) It must be understood that the above power of sale and exchange is applicable only to small estates, and to simple settlements. If the estate is, or under powers of charging may become, subject to incumbrances, a provision would be added for allowing money arising from sales to be applied in discharge of incumbrances. (See, for such a provision, the power in the note at the end of Precedent CLIII., *infra*.) There would also, in a complete power, be provisions for purchasing and selling lands of all tenures (see n. (*a*), on p. 564, *supra*), and a provision that the power shall overreach all estates and charges to be created under the powers or terms of years, except leases actually granted and sales or mortgages actually made. (See the form of a complete power, Dav. Prec. Conv. 4th ed. vol. i. p. 391.)

(*b*) See *supra*, p. 183, n. (*d*), as to the omission of any declaration of trust until surrender of the copyholds.

PRECEDENT CXXXVIII.

ON MARRIAGE, OF REAL ESTATE, THE CHILDREN TAKING AS TENANTS IN COMMON IN TAIL.

or any person being or having the powers of a tenant for life hereunder may purchase or take in exchange, or upon partition, or otherwise acquire, any hereditaments or property, with any title which they or he shall think fit to accept, although the same may be less than or inferior to the title which a purchaser in the absence of a special contract is entitled to require, and the trustees under the direction of the tenant for life, or person having the powers of a tenant for life for the time being hereunder, or at their own discretion according to circumstances, may lend on the security of any hereditaments or property with a like title, and also may [*remainder of additional indemnities*, p. 484, *if and so far as required, adding where the land is registered*, " or to apply forthwith, or at any time, for the entry on the register of any restrictions or inhibitions for the protection of the rights of the persons beneficially interested in the settled hereditaments or otherwise, or for the registration on the death of a tenant for life hereunder of his successor or successors "], and no act or omission in any such respect shall be chargeable as a breach of trust by the trustees, or by any person being or having the powers of a tenant for life hereunder, who shall have directed, joined in, or permitted the same. [*Power to employ agents and for professional trustees to charge. Declaration as to the devolution of the powers of the trustees, supra*, pp. 485, 486 (*a*).] IN WITNESS, &c.

THE FIRST SCHEDULE above referred to.

THE SECOND SCHEDULE above referred to.

(*a*) If the land be registered the deed must be accompanied by a transfer in the prescribed form, and proper restrictions must be entered (see *supra*, pp. 100, 101). But a settlement made in consideration of marriage is not within the compulsory provisions of the Land Transfer Act, 1897. It should be observed, as regards terms for raising money, and powers of charging in settlements of this description affecting registered land, that these will take the

CXXXIX.

Precedent CXXXIX.

On marriage, of freeholds, sons taking successively in tail male.

Settlement, *upon* Marriage, *of* Freeholds *upon the* Husband *for life; remainder, subject to a* jointure rentcharge *for the* Wife, *and* Term *for raising* portions *for* Younger Children, *to the* first *and* other sons *of the marriage in* tail male; *remainder to the* Husband *in* Fee. Trusts *of* Portions Term. Declaration *as to* Trusteeship *for purposes of the* Settled Land Act, 1882, *and as to the application of rents during* minorities *by reference to the* Conveyancing *and Law of Property* Act, 1881. Variations *to* Extend *the powers of the* Settled Land Acts, Settlement *of* Leaseholds *upon corresponding trusts.*

THIS INDENTURE, made, &c., between A., of, &c. [*intended husband*], of the first part, B., of, &c. [*intended wife*], of the second part, and D., of, &c., and E., of, &c. [*trustees of powers*] (hereinafter called the trustees), of the third part, witnesseth, that in consideration of a marriage intended to be solemnized between the said A. and B., he the said A. as beneficial owner (*a*), and with the approbation of the said B., doth hereby grant unto the trustees and their heirs, All and singular the freehold hereditaments described in the first schedule hereto, to hold the premises unto the trustees and their heirs. to the use of the said A. and his heirs, until the said intended marriage, and after the solemnization thereof to the use of the said A. and his assigns, during his life, without impeachment of waste, and after his

Parties.

Witnesseth.

Grant.

Habendum.

To use of settlor till the marriage;

—after to settlor for life.

ordinary form, and that mortgages or charges in pursuance of such terms and powers will also be in the ordinary form, but will be accompanied by a charge in the prescribed form by the registered proprietors (see sect. 6 (7) of the Act of 1897).

(*a*) See *supra*, p. 557, n. (*a*).

PRECEDENT CXXXIX.

ON MARRIAGE, OF FREEHOLDS, SONS TAKING SUCCESSIVELY IN TAIL MALE.

death, TO THE USE that, if the said B. shall survive the said A., she and her assigns may thenceforth receive, during her life, the yearly rentcharge of £——, by way of jointure and in bar of dower, to be [considered as her separate property, without power of anticipation, whilst she shall be under the now intended coverture, and to be] charged upon all the said premises, but to be payable quarterly (*a*), the first quarterly payment thereof to be made at the end of three calendar months from the death of the said A., if the said B. shall be then living (*b*), AND SUBJECT and charged as aforesaid, TO THE USE of the trustees, their executors, administrators, and assigns, for the term of five hundred years, to commence from the death of the said A., without impeachment of waste, upon the trusts and subject to the powers and provisions hereinafter declared and contained concerning the same: AND after the expiration of the same term, and in the meantime subject thereto and to the trusts thereof, TO THE USE of the first and every other son of the said A. by the said B. successively, according to seniority in tail male (*c*), with remainder TO THE USE of the said A., his heirs and assigns for ever (*d*). AND IT IS HEREBY DE-

To use that wife surviving may receive a rentcharge.

To use of the trustees for a term.

Remainder to sons of marriage in tail male.

Remainder to settlor in fee.

(*a*) See p. 522, n. (*a*).

(*b*) The powers of distress and entry, and also power to limit a term for securing the rentcharge, are supplied by the Conv. Act, 1881 (App. IV., *infra*), s. 44.

(*c*) Or, "and the heirs male of their respective bodies." See n. (*a*) on p. 558, *supra*.

(*d*) The following is a form of power enabling A. to charge a gross sum:—

Power to charge a gross sum.

"PROVIDED ALWAYS, that the said A. may by deed or will or codicil expressly referring to this power or the property subject thereto (but subject to the said yearly rentcharge hereinbefore limited, and the powers and remedies for recovering payment thereof), charge all or any of the said premises with the payment to himself or

Trusts of term for raising portions for younger children.

CLARED that the said premises are hereby limited to the trustees, their executors, administrators, and assigns, for the said term of five hundred years, upon trust, that if there shall be any child or children of the said intended marriage (other than the first or only son, and any other son or sons who before his or their respectively attaining the age of twenty-one years shall become entitled (*a*), whether in possession or remainder, under or by virtue of these presents, to the said premises for the first estate in tail male), who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry, then the trustees shall after the death of the said A., or in his lifetime at his request in writing, by mortgage of the said premises or any of them for all or any part of the same term or by any other person or persons and his or their executors, administrators, or assigns, of any sum or sums of money not exceeding in the whole the sum of £——, with interest for the same respectively after any rate not exceeding £—— per cent. per annum from the time or times of such sum or sums respectively being so charged, or from any later time or times. AND ALSO appoint all or any of the premises charged as aforesaid to the same or any other person or persons, his or their executors, administrators, or assigns, for any term or terms of years, with or without impeachment of waste, upon usual trusts for raising by mortgage or otherwise the principal sum or sums of money and interest so charged as aforesaid, and the costs and expenses (if any) to be incurred in or about the execution of the trusts thereof."

(*a*) Add, where appropriate, "or any daughter or daughters who before her or their respectively attaining the age of twenty-one years or marrying shall become indefeasibly entitled."

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the sale of timber, or minerals, or by and out of the rents and profits of the same premises, or any of them, or by all or any of the means aforesaid, or by any other reasonable means, raise for the portion or portions of such child or children as aforesaid (other than a first or only, and other son or sons, so becoming entitled (*a*) as aforesaid), such sum of money as is hereinafter mentioned (that is to say), IF there shall be but one such child (other than as aforesaid), the sum of £—— to be paid to such child, being a son, at his age of twenty-one years, or being a daughter at her age of twenty-one years or day of marriage which shall first happen, if the same shall happen after the death of the said A., and if the same shall happen during his life then immediately after his death, or in his lifetime if he shall so request in writing: AND if there shall be but two such children (other than as aforesaid), the sum of £——; AND if there shall be but three such children (other than as aforesaid), the sum of £——; AND if there shall be four or more such children (other than as aforesaid), the sum of £——. The said sum of £——, £——, or £——, as the event may happen, to be paid to all or such one or more exclusively of the other or others of the children for whose portions the same shall be raised as aforesaid, at such age or time or respective ages or times (not previous as to a son to his attaining the age of twenty-one years, or as to a daughter to her attaining that age or marrying, which shall first happen), if more than one in such shares, with such future executory or other trusts for the benefit of the said children or some or one of them, with such provisions for the respective advancement (in the lifetime of the said A. or after his decease) and maintenance or education of the child or children for the time being entitled in expectancy, and upon such conditions, with such restrictions, and in such manner as the said A. shall by deed, or will, or

(*a*) See last preceding note.

codicil appoint: AND in default of and subject to such appointment, to be divided between the children for whose portions the same shall be raised as aforesaid in equal shares, to be paid to them respectively, being a son or sons at his or their age or respective ages of twenty-one years, or being a daughter or daughters at her or their age or respective ages of twenty-one years or day or respective days of marriage, which shall first happen, if the same respectively shall happen after the death of the said A., but if the same respectively shall happen during his life, then immediately after his death, or in his lifetime if he shall so request in writing: PROVIDED ALWAYS, that no child taking any part of the said sum of £——, £——, or £—— as the case may be, under any appointment in pursuance of the aforesaid power for that purpose, shall, in default of appointment to the contrary, be entitled to any share of the unappointed part of the same sum, without bringing his or her appointed share into hotchpot, and accounting for the same accordingly; AND UPON further trust that the trustees shall, after the death of the said A., by and out of the rents and profits of the said premises comprised in the said term of five hundred years or any part thereof, raise for the maintenance or education of every or any child of the said intended marriage for the time being entitled in expectancy to a portion under the trusts hereinbefore declared, such yearly sum or sums of money (not exceeding what the interest of the then expectant portion of such child would amount to after the rate of £4 per cent. per annum), and to be paid to such person or persons, and applied for maintenance or education in such manner in all respects as the said A. shall by any deed, or by will or codicil appoint, and in default of and subject to such appointment, such yearly sum or sums of money (not exceeding the amount of such interest as aforesaid) as the trustees shall for that purpose deem proper, the said yearly sum or sums of money to be clear

Hotchpot clause.

Maintenance clause.

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of all deductions except death duties, and to be raised and (subject to the said power of appointment in that behalf) to be paid and applied in such manner and at such times as to the trustees shall seem meet; and the trustees may either themselves so apply the same, or may pay the same to the guardian or guardians of such child for the purpose aforesaid, without seeing to the application thereof. PROVIDED ALWAYS, that the trustees may after the death of the said A., or in his lifetime at his request in writing, by the ways and means aforesaid, or any of them, raise any sum or sums of money, not exceeding altogether one-half of the then expectant or presumptive portion under the trusts aforesaid of any son of the said intended marriage for the time being entitled in expectancy to a portion under the same trusts, and pay or apply the money so to be raised for the advancement or benefit of such son, in such manner as the said A. during his life, and after his death as the trustees shall think fit. PROVIDED ALWAYS, that every sum of money raised for the advancement or benefit of any such son as aforesaid, shall be taken to be in part satisfaction of the amount raiseable for portions under the trusts aforesaid, either in the event of such son becoming entitled to a portion under the same trusts, or in the case provided for in the proviso next hereinafter contained, but not otherwise. PROVIDED that no more than the sum of £—— shall be raiseable for portions under the trusts hereinbefore declared, and for the advancement or benefit of sons under the power for that purpose hereinbefore contained, so that if, by reason of any sum or sums having been raised for the advancement or benefit of any son or sons, more than the sum of £—— would, but for this present proviso, have been raiseable for portions and for the advancement or benefit of such son or sons, so much of the sum raiseable for such portions as shall form the excess shall absolutely sink into the estate and not be raised. PROVIDED ALWAYS that the said A. shall, as between him-

Advancement clause.

Provisoes in what events sums raised for advancement are to be taken into account as portions,

—and in what event not to be taken into account.

Tenant for life to be bound to keep down the

self and the persons entitled in remainder (but without prejudice to the rights of the mortgagee or mortgagees) be bound to keep down the interest accruing during his life upon any money raised as aforesaid in his lifetime. PROVIDED ALWAYS that, subject to the trusts hereinbefore declared, and subject to the right of the trustees, by any of the ways or means aforesaid, to raise and reimburse themselves all costs and expenses incurred in relation to the trusts aforesaid, the rents and profits of the said premises comprised in the said term of five hundred years, or so much of the said rents and profits as shall from time to time remain after answering the trusts aforesaid, shall be received by the person or persons for the time being entitled to the same premises in reversion expectant upon the same term. AND IT IS HEREBY DECLARED (*a*), that the trustees shall be the trustees of these presents for the purposes of the Conveyancing and Law of Property Act, 1881, s. 42, and that if any person who would but for that section be beneficially entitled to the possession of the said premises, being tenant in tail male by purchase under these presents, shall die while an infant, the accumulated fund arising during his minority from income of the said premises and investments of income thereof shall (subject to the power in the same section contained of applying accumulations as income) be applied in the purchase of hereditaments in England or Wales for an estate in fee simple to be made subject to the settlement hereby created of the said

interest on money raised in his lifetime.

Surplus rents to be taken by reversioner.

Declaration as to trusteeship and receipt and application of rents during minorities (*b*).

(*a*) This declaration, having reference to sect. 2 (8) of the Settled Land Act, 1882, should be inserted when the settlement trustees take no express power of sale. Trustees having such power are *ipso facto* trustees of the settlement for the purposes of the Act.

(*b*) See *supra*, p. 558, n. (*b*). The minority clause in the text referred to there can be adapted for use here if desired, but in the editors' opinion the statute may be safely relied on. See also the similar clauses in wills, *infra*, p. 644, n. (*a*), and p. 654, n. (*a*).

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premises in the manner prescribed by sect. 24 of the Settled Land Act, 1882, with reference to land acquired by purchase under that Act, but without prejudice to the interim application thereof as capital money arising under that Act. AND IT IS HEREBY DECLARED that the trustees shall be trustees for purposes of the Settled Land Acts, 1882 to 1890, of the settlement created by these presents (*a*). AND THIS INDENTURE ALSO WITNESSETH,

Declaration as to trusteeship for purposes of Settled Land Acts.

(*a*) As the statutory powers of leasing and sale and exchange, given by the Settled Land Act, 1882, cannot be excluded (see sect. 51), it is better, at least in settlements and wills like those in the present collection, which are intended to be as simple and concise as practicable, to rely wholly on the statutory powers, except in cases where the nature of the limitations may make such powers to some extent inapplicable. (See as to such cases, p. 562, n. (*b*), and as to the form of the referential trusts, p. 563, *supra*, n. (*a*), *ad fin.*) The statutory powers appear sufficient to answer all the purposes of the corresponding powers hitherto usually inserted in settlements and wills. But it may sometimes be desirable to insert all or some of the following supplementary provisions thus:—

Extensions of the powers of the Settled Land Acts.

"AND (by way of addition to, or enlargement, or extension of the powers by or by the effect of the Settled Land Acts, 1882 to 1890, conferred on a tenant for life under the said settlement, and on the trustees, and of the powers and provisions ancillary or incidental thereto respectively) IT IS HEREBY DECLARED as follows (that is to say): (1.) The principal mansion-house, and the pleasure grounds and park and lands usually occupied therewith, may be sold, exchanged, or leased by the tenant for life without the consent of the trustees, or an order of the Court. (2.) Capital money may be paid to and received, and all the powers and authorities by the said Acts conferred on trustees may be exercised, by a sole trustee. (3.) Capital money may be invested in or upon (*supra*, pp. 475—477). (4.) Capital money may be applied in or towards payment of the expenses of any improvement without submitting a formal scheme

that, for the consideration aforesaid, he, the said A., as BENEFICIAL OWNER, with the approbation of the said

and without obtaining any other authority for the purpose than a certificate of a surveyor or engineer nominated in that behalf by the trustees. (5.) The expression 'improvement' herein used shall be deemed to include not only improvements authorized by the said Acts, but also the following works (that is to say) (a) rebuilding, enlarging, adding to, substantially repairing or otherwise improving the mansion-house, and the stables, offices, and outbuildings belonging thereto or connected therewith, and other houses, cottages, and buildings of any description; (b) installing apparatus for the supply of light, heat, or power in or to the mansion-house, and the stables, offices, and outbuildings belonging thereto or connected therewith, or any other buildings which in the opinion of the trustees may properly be provided with such apparatus out of capital money; and (c) other works which in the opinion of the trustees will tend to the permanent improvement or benefit of the premises, and ought to be paid for out of capital money. (6.) A tenant for life may enter into a contract to make any sale, exchange, partition, lease, mortgage, or charge, without giving any notice of his intention in that behalf to any trustee of the settlement, or to the solicitor of any such trustee. (7.) Under a mining lease the whole of the rent shall go as rents and profits, no part thereof being in any event set aside as capital money. (8.) The whole income for the time being of investments representing monies arising from the sale of ground rents or hereditaments subject to any lease shall be paid or applied as the rents and profits of the hereditaments sold would have been payable or applicable hereunder if such hereditaments had not been sold, no part thereof being in any event set aside as capital

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B., doth hereby assign unto the trustees, their executors, administrators, and assigns, ALL AND SINGULAR the money. (9.) The person or persons for the time being entitled to exercise the power of sale given by the Settled Land Act, 1882, may raise in manner prescribed by sect. 11 of the Settled Land Act, 1890, any money which may be required for any of the purposes for which capital money is applicable under those Acts or the present settlement, and no mortgagee advancing money upon any mortgage purporting to be made under the power given by that section or the present power, shall be concerned to see that such money is wanted or that no more than is wanted is raised. (10.) The same person or persons may convey, with or without receiving any valuable consideration, the fee simple of any part or parts of the said premises hereinbefore granted, not exceeding altogether —— acres for any of the following purposes (that is to say), for building or making thereon churches, chapels, parsonage houses, schools, churchyards or burial grounds whether in connection with the Church of England or not, or for gardens or orchards to any such parsonage house or school, or for playgrounds for any school, or for any hospital, dispensary, scientific, literary, or charitable institution, public library, or working men's or women's club, but so, nevertheless, that not more than three acres be conveyed at a time for any church or chapel with churchyard or burial-ground attached, or for a detached burial-ground, and not more than one acre at a time for any of the other purposes aforesaid, and so also that any valuable consideration received be dealt with as capital money of the settlement. (11.) The expression 'capital money,' as used in the foregoing clauses, means and includes not only capital monies arising under the said Acts, but also (where the context admits) capital monies arising

leasehold hereditaments described in the second schedule hereto. To HOLD the premises unto the trustees, their executors, administrators, and assigns for the several residues of the terms for which the same are held under the respective leases in the same schedule referred to, and subject to the rents, covenants by the lessees, and conditions by and in the said respective leases reserved and contained and henceforth to be paid, performed, and observed; IN TRUST for the said A., his executors and administrators, until the said intended marriage, and after the solemnization thereof UPON TRUST that the trustees shall, by and out of the rents and profits of the said leasehold premises, pay the rents and perform and observe the covenants by the lessees and conditions by and in the said respective leases reserved and contained; AND SUBJECT thereto shall hold the said leasehold premises UPON SUCH TRUSTS, and subject to such powers, as shall as nearly correspond with the uses, trusts, and powers hereinbefore limited and contained of and concerning the said freehold premises hereinbefore granted, as the different qualities of the estates, and the rules of law and equity will permit; and so that the said leasehold premises shall not vest absolutely in any person hereby made tenant in tail male by purchase of the said freehold

Assignment of leaseholds on trusts corresponding with the uses of the freeholds.

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by means or in consequence of any power hereby conferred by way of addition to or enlargement or extension of the powers of the said Acts, or under any trust hereby declared."

See sects. 34, 39, 45, 9 and 11 of the Settled Land Act, 1882, and sect. 10 of the Settled Land Act, 1890. It is thought, however, that the provisions of sect. 39 are excluded by the operation of the clause, *infra*, regulating the devolution of the trustees' powers; and also that as a general rule the powers of investment given by the Act, extended (as it is presumed they are) by the Trustee Act, 1893, may (in settlements of this class) be treated as sufficient.

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premises, unless such person shall attain the age of twenty-one years, but, on his death under that age, shall devolve in the same manner as if they had been freeholds of inheritance included in the grant and limitations hereinbefore contained (*a*). [*Power to appoint new trustees, and additional indemnities, &c., ut supra*, pp. 565, 566.] IN WITNESS, &c.

THE FIRST SCHEDULE above referred to.

THE SECOND SCHEDULE above referred to.

CXL.

PRECEDENT CXL.

FAMILY SETTLEMENT BY FATHER AND SON OF ESTATES AND STOCKS.

FAMILY SETTLEMENT *by* FATHER *and* SON *of* ESTATES *and* STOCKS, *subject to their joint power of appointment and of estates belonging to the* FATHER. LIMITATION *of* RENTCHARGES *to the* SON. LIMITATIONS *to the* FATHER *for* LIFE, *with remainder to the* SON *for* LIFE, *with remainder to the* TRUSTEES *for a* PORTIONS TERM, *with remainder to the* FIRST *and* OTHER SONS *of the son successively in* TAIL MALE *and other remainders*. TRUSTS *of the* PORTIONS TERM *for* YOUNGER CHILDREN *of the* SON. POWER *for the* SON *to* JOINTURE *a* FUTURE WIFE. POWER *for* SUBSEQUENT TENANTS *for* LIFE *to* JOINTURE *and charge* PORTIONS. DECLARATION *as to* TRUSTEESHIP. GENERAL CLAUSES.

Parties.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*father*], of the first part, B., of, &c., the eldest son of the said A., of the second part, and C., of, &c., and D., of, &c. (hereinafter called the trustees), of the third part.

(*a*) A form for the settlement of copyholds on similar trusts will be found in the last Precedent. If the land be registered the deed must be accompanied by a transfer in the prescribed form, and proper restrictions must be entered. See *supra*, p. 100.

PRECEDENT CXL.

FAMILY SETTLEMENT BY FATHER AND SON OF ESTATES AND STOCKS.

Recitals.

WHEREAS, by virtue of an indenture of settlement, dated the — day of ——, and expressed to be made between [*parties*], and of an indenture, dated the —— day of ——, enrolled and perfected as a disentailing assurance, and expressed to be made between [*parties*] (*a*), the hereditaments described in the first schedule hereto stand limited and settled, subject to the uses and estates limited or created by the said indenture of settlement which preceded the limitation to the first son of the said A. (other than the estate for life of the said A.), and to the powers annexed to such preceding uses or estates, or exerciseable during the continuance thereof, TO SUCH USES and subject to such powers and provisions as the said A. and B. shall by deed jointly appoint; AND IN DEFAULT of and until and subject to such appointment, TO THE USES upon the trusts and subject to the powers and provisions which, by virtue of the said indenture of settlement, were subsisting or capable of taking effect therein immediately before the execution of the said indenture of disentailing assurance, so as to restore and confirm the same uses, trusts, powers and provisions; AND the sums of stock specified in the

(*a*) See Precedent CLXXI., *infra*, which will be used with the variations indicated in the notes, omitting the words in square brackets. It is understood that the Commissioners of Inland Revenue do not regard a disentailing assurance in that form as a voluntary disposition within the meaning of the Finance (1909-10) Act, 1910, s. 74, subjecting instruments which operate as such dispositions to *ad valorem* duty; but they would, no doubt, entertain a contrary opinion if the assurance had the effect of creating new estates. Thus it would not be prudent to limit successive powers, or to limit successive estates otherwise than by reference to the old uses.

It may be as well to add that, though it has been usual to effect a resettlement in this manner, there is another method which is equally effectual. The disentail may be made by a deed in the form of Precedent CLXXI., as given in the text, and not as varied in the notes; the resettlement can then be made by means of a conveyance by the father and the son of their respective estates and interests; and there will be no difficulty in adapting this Precedent for the purposes of a resettlement according to that scheme.

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third schedule hereto stand settled, subject as hereinbefore is mentioned in relation to the said hereditaments, UPON SUCH TRUSTS and subject to such powers and provisions as the said A. and B. shall by deed jointly appoint; AND IN DEFAULT of and until and subject to such appointment, UPON THE TRUSTS and subject to the powers and provisions which, by virtue of the said indenture of settlement were subsisting or capable of taking effect therein immediately before the execution of the same indenture of disentailing assurance, so as to restore and confirm the same trusts, powers, and provisions; AND WHEREAS the said A. is seised in fee simple in possession free from incumbrances of the hereditaments described in the second schedule hereto; AND WHEREAS, as part of an arrangement between them and for continuing in the family the possession of all the said hereditaments and premises, the said A. and B. have agreed to make such settlement as is hereinafter contained. Now THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement and in consideration of the premises, they the said A. and B., as settlors in exercise of the power vested in them by the said indenture of disentailing assurance, and of every other power enabling them, or either of them, in this behalf, do, and each of them doth, hereby appoint that all and singular the hereditaments described in the first schedule hereto, and all other the hereditaments (if any) over which the said A. and B. have a joint power of appointment, shall, from and immediately after the execution of these presents by them the said A. and B. (but subject to the uses and estates limited or created by the said indenture of settlement which preceded the limitation to the first son of the said A. (other than the estate for life of the said A.), and to the powers annexed to such preceding uses and estates or exerciseable during the continuance thereof respectively), remain and be TO THE USES upon the trusts and subject to the powers and provisions hereinafter declared and contained concerning

Testatum.

Appointment.

the same. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement and for the consideration aforesaid, he the said A., as settlor, doth hereby grant unto the trustees and their heirs all and singular the hereditaments described in the second schedule hereto, TO HOLD the premises hereinbefore granted unto the trustees and their heirs, TO THE USES upon the trusts and subject to the powers and provisions hereinafter declared and contained concerning the same. AND IT IS HEREBY AGREED and declared that the appointment and grant hereinbefore respectively contained shall operate and enure, and that all and singular the hereditaments hereinbefore appointed and granted respectively shall remain and be TO THE USE that the said B. and his assigns, during the joint lives of himself and the said A., may receive, during so long as the said B. shall continue to reside with the said A. (*a*), the yearly rentcharge of £——; AND in case the said B. shall discontinue to reside with the said A., then from the time of such discontinuance and thenceforth during the joint lives of the said A. and B., the yearly rentcharge of £——, the said yearly rentcharge of £—— or £——, as the case may be, to be charged upon and issuing out of all the said hereditaments, and to commence from the date of these presents, but to be payable quarterly without any deduction on the usual quarter days (*b*); AND TO THE FURTHER USE that, if the said B. shall die in the lifetime of his present wife C., she the said C. and her assigns may, from and after the death of the said B., receive during her life the yearly

Further testatum.

Grant.

Limitation.

Rentcharge to son.

Rentcharges to son's wife by way of jointure.

(*a*) This is a very unusual provision; but, where the son is unmarried, the limitation of alternative rentcharges of varying amounts is common, it being usually intended that he shall take a larger annuity in the event of and after his marriage. Sometimes a rentcharge is also limited to trustees for the benefit of the son's eldest son, in case the former dies in his father's lifetime.

(*b*) See note (*a*), p. 522, *supra*.

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rentcharge or rentcharges following (that is to say), if and so long as the said A. shall be living the yearly rentcharge of £——, and after the death of the said A. the yearly rentcharge of £——, to be respectively charged upon and issuing out of all the said hereditaments, and to be payable quarterly without any deduction on the usual quarter days, the first payment in respect of the said rentcharge of £—— to be made on such of those days as shall happen next after the death of the said B. if the said A. shall then be living, and the first payment in respect of the said rentcharge of £—— to be made on such of those days as shall happen next after the death of the survivor of the said A. and B. if the said C. shall then be living; AND, subject and charged as aforesaid, TO THE USE of the said A. and his assigns during his life without impeachment of waste (*a*); AND AFTER the death of the said A., TO THE USE of the said B. and his assigns during his life without impeachment of waste; AND AFTER the death of

To the father for life.

To the son for life.

(*a*) It has been the practice to introduce here the words, "and so far as regards the said hereditaments hereinbefore appointed in restoration and by way of continuation and confirmation of the former life estate of the said A., limited to him by the said indenture of settlement," so as to enable charges under that settlement to be overreached. It appears, however, that the powers annexed by the Settled Land Acts to the life estate of A. under that settlement, or vested in him by the same Acts as tenant for life under that settlement, will remain exerciseable whether the life estate is restored or not, and also that the powers under the re-settlement will be exerciseable if the life estate under the former settlement is not restored (see *Re Mundy and Roper's Case*, [1899] 1 Ch. 275), though not (according to *Re Cornwallis-West and Munro's Contract*, [1903] 2 Ch. 150) if it be restored (see also *Re Lord Wimborne and Browne's Contract*, [1904] 1 Ch. 537; and the notes to sect. 2 (1) of the Settled Land Act, 1882, *infra*, pp. 835, 836). It seems better, therefore, for the present not to restore the life estate under the former settlement.

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the said B., TO THE USE of the trustees, their executors, administrators and assigns, for the term of 500 years from the death of the survivor of the said A. and B., without impeachment of waste, upon the trusts and subject to the powers and provisions hereinafter declared and contained concerning the same; AND AFTER the expiration or determination of the same term, and in the meantime subject thereto and to the trusts thereof, TO THE USE of the first and every other son of the said B. successively according to their respective seniorities in tail male (*a*), with remainder TO THE USE of [*E., the second son of A., for life, remainder to the first and other sons of E. successively in tail male, remainder to F., the third son of A., for life, remainder to the first and other sons of F. successively in tail male*], with remainder TO THE USE of the said B., his heirs and assigns. AND IT IS HEREBY DECLARED that the said premises are hereby limited to the trustees, their executors, administrators and assigns, for the said term of 500 years, upon trust that the trustees shall, after the death of the said A. and B., or in their or his lifetime, at their or his request in writing (*b*), by mortgage of the same premises or any of them for all or any part of the same term, or by the sale of timber or minerals, or by and out of the rents and profits of the same premises or any of them, or by all or any of the means aforesaid, or by any other reasonable means, raise for the portion or portions of the child or children of the said B. (whether by the said C. or any other wife) (*c*) who being a son or sons shall attain the age of twenty-one years, or being a daughter or daughters shall attain that age or marry,

Portions term.

Remainders in strict settlement in tail male.

Trusts of portions term.

(*a*) See note (*a*), p. 558, *supra*.

(*b*) It is sometimes arranged that the portions shall become raiseable upon the death of B.; but, if that be the scheme, the position of the term in order of limitation must be altered as well as the trusts.

(*c*) *I.e.*, unless he takes an express power to charge portions for children of a future marriage.

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other than a first or only son and any other son or sons who, before his or their respectively attaining the age of twenty-one years, shall become entitled, whether in possession or remainder, to the said premises for the first estate in tail male, such sum of money as is hereinafter mentioned (that is to say): IF there shall be but one such child (other than as aforesaid), the sum of £——, to be paid to such child, being a son, at his age of twenty-one years, or being a daughter at her age of twenty-one years or marriage, which shall first happen, if the same shall happen after the death of the said A. and B., and if the same shall happen in the lifetime of them or the survivor of them, then immediately after the death of the survivor of them, or in the lifetime of them or the survivor of them, if they or he shall so request in writing; AND if there shall be but two such children (other than as aforesaid), the sum of £——; AND if there shall be but three such children (other than as aforesaid), the sum of £——; AND if there shall be four or more such children (other than as aforesaid), the sum of £——, the said sum of £——, £——, or £——, as the event may happen, to be paid or divided to or between the children for whose portions the same shall be raised, or any one or more exclusively of the other or others of them, in such shares, if more than one, and with such future executory or other trusts, for the benefit of all or any one or more of such children, upon such conditions, with such restrictions, and in such manner as the said B. shall by deed or will or codicil appoint; AND IN DEFAULT of and subject to such appointment, to be paid or divided to or between the children for whose portions the same shall be raised in equal shares, to be paid to them respectively being a son or sons at his or their age or respective ages of twenty-one years, or being a daughter or daughters at her or their age or respective ages of twenty-one years or day or respective days of marriage, which shall first happen, if the same shall happen after the death of the said A. and

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B., but if the same respectively shall happen in the lifetime of them or the survivor of them, then immediately after the death of the survivor of them, or in the lifetime of them or the survivor of them, if they or he shall so request in writing [*Hotchpot clause, supra*, p. 571]. AND UPON FURTHER TRUST, that the trustees shall, after the death of the said A. and B. [*remainder of maintenance clause, supra*, p. 571, *saying*, "any child of the said B." *and substituting B. for A.*]. PROVIDED ALWAYS, that the trustees may, after the death of the said B., or in his lifetime with his consent in writing (but in either case with the consent in writing of the said A. during his lifetime), raise by the means aforesaid, or any of them, any sum or sums [*remainder of advancement clause, supra*, [p. 572; *saying*, "any son of the said B.," *and substituting B. for A.; provisoes as to sums raised for advancement being taken or not taken into account as portions, and as to surplus rents, supra*, pp. 572, 573]. PROVIDED ALWAYS, and it is hereby declared, that if the said B. shall survive the said C. (*a*), and marry again, it shall be lawful for him, either before or after his marriage, by deed or will or codicil, to appoint to any woman whom he may so marry, for her life or any less period, any yearly rentcharge or rentcharges by way of jointure (*b*), not exceeding in the whole during the joint lives of the said A. and such woman the sum of £ ——, and not exceeding after the death of the said A. the sum of £——, to be charged upon and issuing out of all or any of the said premises hereinbefore appointed and granted respectively [without any deduction]; and to be paid at such times and in such manner as to the said B. shall seem meet. AND IT IS HEREBY DECLARED, that the power of jointuring hereinbefore contained may be exercised as often as the said B. shall marry. PROVIDED ALWAYS, and it is hereby declared, that it shall be lawful for each person hereby made tenant

Power of advancement.

Power to the son to jointure a future wife.

Power to subsequent

(*a*) See *Marlborough* v. *Marlborough*, [1901] 1 Ch. 165.

(*b*) See *Re De Hoghton*, [1896] 2 Ch. 385.

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for life of the said premises other than the said A. and the said B., either before or after he shall become entitled to the possession or the receipt of the rents and profits of the same premises (but subject to the uses and estates preceding the estate of the person for the time being exercising this power, and to the powers annexed to such preceding estates, and to the uses or estates limited in exercise of such powers), by deed or will or codicil

tenants for life to jointure.

[*continue the power of jointuring, infra*, p. 645, *with the ancillary provisoes as to the exercise of the powers from time to time, and as to the jointure becoming a lien, and limiting the total amount for which the estates are to be liable at any one time, mutatis mutandis, and saying,* "rentcharges exceeding in the whole, together with the annual sum for the time being payable to the said C., or any other wife of the said B., the annual sum of £——."]

Power to subsequent tenants for life to charge portions.

PROVIDED ALWAYS, and it is hereby declared, that it shall be lawful for each person hereby made tenant for life of the said premises other than the said A. and the said B. either before [*continue the power of charging portions for children other than a son becoming entitled to the estates in tail male, with the ancillary provisoes infra*, pp. 646, 647, 648, *mutatis mutandis and restricting the total amount to* "such a sum as, together with any sum raiseable for portions under the trusts of the said term of 500 years, will make up the aggregate sum of £——."]

Declaration as to trusteeship.

[*Declaration as to trusteeship for purposes of sect. 42 of the Conveyancing and Law of Property Act*, 1881, p. 573, *supra, saying,* "shall (subject to the power in the said section contained of applying accumulations as income) be held upon the trusts applicable to monies produced by the sale under the power in that behalf conferred by the Settled Land Act, 1882, of the hereditaments hereinbefore appointed and granted respectively." *Declaration as to trusteeship for purposes of the Settled Land Acts*, p. 574, *supra, and note* (*a*).]

Assignment of stocks.

AND THIS INDENTURE ALSO WITNESSETH, that in further pursuance of the said agree-

ment and for the consideration aforesaid, they the said A. and B., as settlors, in exercise of the power vested in them by the said indenture of disentailing assurance, and of every other power enabling them or either of them in this behalf, do, and each of them doth, hereby appoint that ALL and singular the sums of stock specified in the Third Schedule hereto shall, subject as hereinbefore is mentioned in relation thereto, belong to and be held in trust for the trustees, and shall, with all convenient speed, be transferred into their names UPON TRUST that they shall apply the same for the purposes applicable to stocks or funds representing monies produced by the sale under the power in that behalf conferred by the Settled Land Act, 1882, of the hereditaments hereinbefore appointed and granted respectively. PROVIDED ALWAYS, that every trust hereinbefore declared by reference to the trusts applicable to monies produced by the sale under the power in that behalf conferred by the Settled Land Act, 1882, of the said hereditaments, or, as the case may be, to the trusts applicable to stocks or funds representing such monies, shall be deemed to import primarily a direction for the investment of the monies, stocks, or funds whereof trusts are so declared, or the proceeds thereof, in the purchase of hereditaments for an estate in fee simple, to be made subject to the settlement hereby created of the said hereditaments hereinbefore appointed and granted in the manner prescribed by sect. 24 of the Settled Land Act, 1882, with reference to land acquired by purchase as in that Act mentioned, but without prejudice, nevertheless, to the interim application thereof as capital money arising under that Act. PROVIDED ALWAYS, that nothing herein

Provision as to trusts declared by reference to the statutory trusts of capital money (*a*).

Overreaching clause (*b*).

(*a*) This is a clause of importance. See *Re Walker*, [1908] 2 Ch. 705.

(*b*) See note (*a*), p. 582, *supra*. It is better to retain this clause; but any powers not intended to be preserved (*e.g.*, a power to jointure a future wife) should be excepted.

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contained shall prejudice or affect the powers annexed to the life estate of the said A. by the said indenture of settlement or the powers exerciseable thereunder by any trustees or trustee thereof, with the consent of the said A., or the statutory powers incident to the said life estate, and that the uses, estates, and powers limited or created by these presents, or to be limited or created by any exercise of the powers herein contained, shall from time to time, as regards the hereditaments hereinbefore appointed, be overreached by the exercise of any of the said powers contained in the said indenture of settlement or the said statutory powers in the same manner as if the uses, estates, and powers limited or created by these presents had been limited or created by the said indenture of settlement; AND THAT the hereditaments to be purchased with the monies to arise from any sale or exchange under the powers contained in the said indenture of settlement or the said statutory powers shall (regard being had to the nature and tenure thereof) be settled and assured TO THE USES upon the trusts and subject to the powers and provisions which shall be subsisting by virtue of the said indenture of settlement, the said indenture of disentailing assurance, and these presents. [*Power to appoint new trustees and additional indemnities, &c., ut supra*, pp. 565, 566.] IN WITNESS, &c. (*a*).

Trustee clauses.

THE FIRST SCHEDULE above referred to.

THE SECOND SCHEDULE above referred to.

THE THIRD SCHEDULE above referred to.

(*a*) As to the stamp, apparently this must now be adjudicated unless it should be held that the settlement is not a voluntary disposition within the meaning of sect. 74 of the Finance (1909-10) Act, 1910.

CXLI.

Precedent CXLI.

In favour of wife absolutely.

Will *giving the testator's whole property to his* Wife (*a*).

I, A. B., of, &c., declare this to be my last will, and I hereby devise and bequeath all my real and personal estate unto my wife C. B. absolutely and appoint her sole executrix of this my will, In witness whereof I, the said A. B., have to this my will set my hand this —— day of ——, 19—.

[*Testator's signature.*]

Signed and acknowledged by the above-named A. B. as his will in the presence of us, present at the same time, who, in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses.

[*Signatures and descriptions of witnesses.*]

(*a*) This is a specimen of the simplest form of will where the whole property is given to one person absolutely, and where consequently any provisions as to the conversion or management of the property, &c. are unnecessary. A form of will, where the entire residue is given to one person absolutely, but containing specific devises and bequests and gifts of legacies, will be found *infra* in Precedent CXLV.

CXLII.

PRECEDENT CXLII.

IN FAVOUR OF WIFE AND CHILDREN.

WILL *in favour of the testator's* WIFE *and* CHILDREN (*a*).

Revocation of prior wills.

Appointment of executors, trustees, and guardians.

I, A. B., of, &c., HEREBY REVOKE all testamentary instruments heretofore made by me, and DECLARE this to be my last will (*b*). I APPOINT X., of, &c., Y., of, &c., and Z., of, &c. (hereinafter called my trustees), to be the executors (*c*) and trustees of this my will [and guardians (*d*) of my infant children]. I BEQUEATH to my

(*a*) This is a very short form, but will often suffice. It should be compared with the next Precedent.

(*b*) Every will (except a will of the same short and simple kind as that given in the last Precedent) should contain a clause expressly revoking all former testamentary dispositions, in order to render impossible any question as to the revocation of any prior testamentary instrument then left uncancelled. Of course, a will by which a testator's whole estate is effectually disposed of, operates as a revocation of any prior will; but a mere statement in a will, that it is the testator's "last will," does not necessarily imply an intention to revoke previous testamentary instruments. See *Lemage* v. *Goodban*, L. R. 1 P. & D. 57; *Hellier* v. *Hellier*, 9 P. D. 237; and compare *Dempsey* v. *Lawson*, 2 P. D. 98; *Robinson* v. *Clarke*, *ib.* 269; *Jenner* v. *Finch*, 5 P. D. 106. Any testamentary disposition intended to take effect by way merely of modification of a prior will, should be framed expressly as a codicil.

(*c*) Under the Land Transfer Act, 1897, Part I. (App. XVIII., *infra*), real estate vests in the personal representative or representatives as if it were a chattel real. It should therefore be dealt with by will in accordance with the practice hitherto in use as regards chattels real. These have always been disposed of without regard to the fact that they vest in the executor; and it seems to follow that, as a general rule, no alteration of the common forms is needed in consequence of Part I. of the Act.

(*d*) By the Guardianship of Infants Act, 1886 (49 & 50 Vict. c. 27), the mother, if surviving, is guardian either alone when no guardian has been appointed by the father, or jointly with any guardian appointed by the father (sect. 2). And (sect. 3) the mother may appoint a guardian to act after the death of herself and the father, and when guardians are appointed by both parents they are to act

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wife C. B. all the furniture and effects in and about my usual place of residence at my death, except money and securities for money. I BEQUEATH to my said wife £——, to be paid to her within one month after my death. I BEQUEATH to each of my trustees who shall prove this my will £——. AND I DECLARE that the several specific and pecuniary legacies hereinbefore bequeathed [*or* bequeathed by this my will or any codicil hereto], shall be delivered and paid to and taken by the respective legatees free from legacy duty. I [DEVISE and] BEQUEATH all my [real and] personal estate not hereby otherwise disposed of unto my trustees UPON TRUST that they shall sell, call in, and collect the same, AND SHALL out of the monies arising thereby and all other monies forming part of my estate, PAY my funeral and testamentary expenses [including the estate duty payable on my death in respect of my residuary real estate and the increment value duty (if any) in respect of the same estate or any part or parts thereof] (*b*) and debts and

Bequest of furniture, &c., to wife;

—of immediate legacy to wife;

—of pecuniary legacies to executors.

Legacies to be free from legacy duty (*a*).

Devise and bequest of residuary real and personal estate to trustees, upon trust for conversion;

—to pay debts and legacies;

jointly. See *Re McGrath*, [1892] 2 Ch. 496; [1893] 1 Ch. 143. The statutory rights of the mother will not be interfered with by the Court unless the welfare of the infant children requires it. *Re X.*, [1899] 1 Ch. 526; cf. *F.* v. *F.*, [1902] 1 Ch. 688.

(*a*) The estate duty payable under the Finance Act, 1894, upon the personal estate passing to the executor as such, being analogous to the old probate duty, is payable out of the general residuary personal estate, and specific and pecuniary legatees bear no part of it: see *Re Webber*, [1896] 1 Ch. 914. By virtue of the Finance (1909-10) Act, 1910, sect. 58 (2), a legacy to a wife or husband is now subject to legacy duty at the rate of one per cent., and the like duty on a legacy to a lineal ancestor or descendant of the testator is no longer covered by the estate duty, except in the following cases (namely)—when the estate does not exceed 15,000*l.*, or the amount of the legacy or legacies derived by the same person does not exceed 1,000*l.*, or in the case of a widow or child under twenty-one does not exceed 2,000*l.*

(*b*) "Testamentary expenses" include all expenses necessary to obtain an effectual grant of probate (*Re Clemow*, [1900] 2 Ch. 182), and therefore the estate duty on all property which passes to the

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IN FAVOUR OF WIFE AND CHILDREN.

—to invest residue;

—with powers to vary;

—to pay income to wife for life;

—and after her death for children.

Power of advancement.

the legacies other than specific hereby bequeathed and the legacy duty on legacies bequeathed free of duty; AND SHALL invest the residue of the said monies in any of the investments for the time being authorised by law for the investment of trust monies (*a*); AND may vary such investments at discretion; AND shall pay the income of the said residuary monies and investments to my said wife during her life, AND after her death shall hold the same and the income thereof IN TRUST for all my children or any my child who, being sons or a son, attain the age of twenty-one years, or, being daughters or a daughter, attain that age or marry, and if more than one in equal shares (*b*): PROVIDED that my trustees may after the

executor in that character (*Re Pullen*, [1910] W. N. 60), including personal estate appointed under a general power (*Re Hadley*, [1909] 1 Ch. 20), but not estate duty in respect of real estate (*Re Sharman*, [1901] 2 Ch. 280), nor settlement estate duty (*Re King*, [1904] 1 Ch. 363, although in general the expression "estate duty" would include the latter duty (*Re Leveridge*, [1901] 2 Ch. 830). Where, as in this Precedent, legacies are directed to be paid out of a mixed fund, they will, in the absence of a direction to the contrary, bear their own estate duty so far as they are payable out of the portion of the fund attributable to realty: *Re Spencer Cooper*, [1908] 1 Ch. 130. See p. 597, n. (*b*).

(*a*) Other powers of investment will be found *supra*, pp. 475, 476.

(*b*) This trust for children, as a class, includes only children living at the testator's death, and therefore would not give, under sect. 33 of the Wills Act (1 Vict. c. 26), any share to a child predeceasing the testator, but leaving issue living at the testator's death. See 1 Jarman, Wills, vol. i. 5th ed. p. 322.

A will of this kind, simply dividing the testator's property among his children equally, will most frequently be made while the children are all young. In such case, any provision for the event of a child dying before the testator and leaving issue may be properly omitted, since the contingency is remote, and it may reasonably be assumed that the testator, if he lives till his children grow up, will revise his will. But when such a will is made in favour of adult children, some provision for the above contingency may often be desirable. Such provision may be made by framing the trust

death of my said wife or previously thereto with her consent in writing raise any part or parts not exceeding one half of the then expectant presumptive or vested share or fortune of any child and apply the same for his or her advancement or benefit (*a*): AND IF there shall be no child

for children, either so as to substitute the children of any child predeceasing the testator for such child, or so as to include, in the class of children, those predeceasing the testator and leaving issue living at his death (see Precedents CXLIII. and CXLIV., *infra*). Alternatively the children of a deceased child may be substituted by a separate clause:—

Clause substituting issue of child predeceasing testator.

"PROVIDED ALWAYS, and I declare, that if any child of mine shall die in my lifetime leaving issue in existence at my death, the issue in existence at my death who being male attain the age of twenty-one years, or being female attain that age or marry, of each child of mine so dying shall take by substitution as tenants in common in equal shares per stirpes if more than one, the share in my residuary estate which such child of mine would have taken under the trust in that behalf hereinbefore declared had he or she survived me [and attained a vested interest]."

Where it is desired that the share of a child dying in the testator's lifetime leaving issue shall go to his legal personal representatives, the following form may be used:—

Clause substituting representatives of child predeceasing testator leaving issue.

"PROVIDED ALWAYS, and I declare, that if any child of mine shall die in my lifetime leaving issue in existence at my death, the share in my residuary estate which such child would have taken under the trust hereinbefore declared, had he or she survived me [and attained a vested interest], shall devolve on his or her representatives as part of his or her personal estate in the same manner as if he or she had survived me and died immediately after me."

(*a*) As to the omission of the maintenance and accumulation clauses, and the statutory provisions for that purpose, see *supra*,

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of mine living at my death, who being a son attains the age of twenty-one years, or being a daughter attains that age or marries, then, from and after the death of my said wife, and such default or failure of children, the said monies and investments and the income thereof, or so much thereof respectively as shall not have become vested or been applied under any of the trusts and powers herein contained or by statute implied, shall be held in trust for such of my brothers and sisters living at my death, and for such of the issue living at my death of any of my brothers and sisters who may have died in my lifetime, as respectively being male attain the age of twenty-one years, and being female attain that age or marry, and if more than one as tenants in common in equal shares per stirpes (*a*): PROVIDED ALSO that my

Disposition in default of children entitled under the preceding trusts;

—in favour of brothers and sisters, and their issue per stirpes.

Power to postpone conversion.

p. 471, n. (*b*). The forms formerly in use in wills are subjoined to be inserted when this is desired :—

Maintenance and accumulation clauses.

"AND I HEREBY DECLARE that my trustees shall after the death [or second marriage] of my said wife, [which shall first happen,] apply the whole, or such part as they shall think fit, of the annual income of the share or fortune to which any child shall, for the time being, be entitled in expectancy under the trusts hereinbefore declared, for or towards the maintenance or education of such child, either directly, or by paying the same for such purpose to his or her guardians or guardian, without seeing to the application thereof; AND SHALL, during such suspense of absolute vesting, accumulate the residue (if any) thereof in the way of compound interest, by investing the same, and the resulting income thereof, in or upon any such stocks, funds, shares, or securities as are hereinbefore mentioned, for the benefit of the person or persons who, under the trusts herein contained, shall become entitled to the principal fund from which the same respectively shall have proceeded, as or by way of an accretion to the capital of the same fund, but with power for my trustees to resort to the accumulations of any preceding year or years, and apply the same for or towards the maintenance or education of the child for the time being presumptively entitled to the same respectively."

(*a*) If the testator's children are numerous, the bequest in default of children will probably be omitted.

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trustees may wholly or partially postpone the said sale, conversion, and collection so long as they shall deem proper [my real estate being nevertheless considered as personalty from my death] and may during such postponement [manage and let for any term of years at rack rent my real and leasehold estates and] make any outlay which they may consider proper for the benefit or in respect of my [real and personal] estate: But the net income produced during any such postponement, from all or any part of my estate howsoever invested and of whatsoever description, shall as from my death be applicable as income, and no property not actually producing income shall be treated as producing or entitling anyone to receipt of income. IN WITNESS, &c.

CXLIII.

WILL *of* REAL *and* PERSONAL ESTATE *for the Benefit of the Testator's* WIFE *during Widowhood, and* CHILDREN. SETTLEMENT *of* DAUGHTERS' SHARES *and* OTHER PROVISIONS (*a*).

PRECEDENT CXLIII.

IN FAVOUR OF WIFE DURING WIDOWHOOD, AND CHILDREN, WITH SETTLEMENT OF DAUGHTERS' SHARES, AND OTHER PROVISIONS.

I, A. B., of, &c., HEREBY revoke all testamentary instruments heretofore made by me, AND DECLARE this to be my last will (*b*). I APPOINT X., of, &c., Y., of, &c., and Z., of, &c. (hereinafter called my trustees), to be the executors of this my will (*c*), and to be the trustees of this my will for the several purposes hereinafter expressed or referred to [and guardians (*d*) of my infant

Revocation of prior wills.

Appointment of executors, trustees, and guardians.

(*a*) This is a full form adapted (it is conceived) for ordinary use, but to be compared with the last Precedent.

(*b*) See n. (*b*), on p. 590, *supra*.

(*c*) See n. (*c*), on p. 590, *supra*.

(*d*) See n. (*d*), on p. 590, *supra*.

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IN FAVOUR OF WIFE DURING WIDOWHOOD, AND CHILDREN, WITH SETTLEMENT OF DAUGHTERS' SHARES, AND OTHER PROVISIONS.

children]. AND I DECLARE that all the trusts, powers and authorities, and indemnities by this my will vested in, or given to or provided for my trustees, shall respectively devolve upon and be exerciseable by and available for the protection of the survivors and survivor of them and the executors or administrators of such survivor and other the trustees or trustee for the time being of this my will. I BEQUEATH to my wife C. B., free of legacy duty (*b*), all my watches, jewels, ornaments of the person, and wearing apparel, and all my plate, plated articles, furniture, linen, glass, china, pictures, prints, objects of *virtu* or curiosity, musical instruments, books, and other articles of household use or ornament, [motor cars], horses, carriages, saddlery, harness, stable [and motor house] furniture, live and dead stock, tools, implements, and utensils, and wines, liquors, household stores and provisions [which respectively shall at my death be in or about or belonging to my dwelling-house known as ——, or other my usual place of residence at my death or the outbuildings or grounds thereof]. I BEQUEATH the following pecuniary legacies (that is to say): To my said wife £—— to be paid to her within one month after my death, free of legacy duty (*b*). To each of my trustees who shall prove this my will £——; AND TO each of my domestic [and outdoor] servants who shall be in my service at my death, and shall have been in such service for not less than two years immediately preceding my death, and shall not then be under notice to leave, whether given or received, £—— [one year's wages, or (as the case may be) a sum equal

Declaration as to devolution of powers of trustees (*a*).

Gift to wife of household goods, furniture, and chattels, in and about a house.

Bequest of pecuniary legacies to wife (to be paid immediately), executors, and servants.

(*a*) This clause should, it is thought, be inserted as a general rule, though, perhaps, not essential. See the Conv. Act, 1881 (App. IV., *infra*), s. 30; the Trustee Act, 1893 (App. XVI., *infra*), s. 22; and *Re Crunden & Meux's Contract*, [1909] 1 Ch. 690.

(*b*) See n. (*a*), on p. 591, *supra*.

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to the aggregate of his or her wages for one year (*a*)], free of legacy duty (*b*) and in addition to any wages due to him or her. I DEVISE and BEQUEATH all my real and personal estate whatsoever (except what I otherwise dispose of by this my will, or any codicil hereto) unto and to the use of my trustees, their heirs, executors, and administrators respectively, according to the nature and tenure thereof, UPON TRUST that my trustees shall sell, call in, and collect, or otherwise convert into money such parts of the premises as shall not consist of ready money [but as to reversionary property not until it shall fall into possession, unless it shall appear to my trustees that the capital of the trust estate will be injured by deferring the sale, or that for any other reason an earlier sale is desirable]; AND shall, out of the monies to arise from such sale, calling in, collection, and conversion, and the ready money of which I shall be possessed at my death, PAY my funeral and testamentary expenses [including the estate duty payable on my death in respect of my residuary real estate and the increment value duty (if any) in respect of the same estate or any part or parts thereof] and debts, and the legacies other than specific

General devise of real and personal estate in trust for sale and conversion into money;

—and out of the money produced by the real and personal estate,

—to pay funeral and testamentary expenses, debts, and legacies, and to invest the residue.

(*a*) Under a bequest of a year's wages it would seem that a servant could not take unless employed by the year or at wages calculated by the year. See *Re Ravensworth*, [1905] 2 Ch. 1.

(*b*) Small legacies to servants are generally intended to be free from duty. The exemption from duty of legacies under 20*l.* was abolished by sect. 42 of the Customs and Inland Revenue Act, 1881 (44 Vict. c. 12). It may often be convenient to deal with the legacy duty by a general clause, as on p. 591, *supra*; and occasionally to deal with all the duties in a similar manner, as, *e.g.*,

"I declare that the estate, settlement estate, legacy, and succession duties and increment value and other death duties (if any) payable at my death in respect of any and every part of my estate, or the dispositions thereof contained in this my will, shall be considered as part of my testamentary expenses, and be paid accordingly."

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bequeathed by this my will or any codicil hereto, and the legacy duty on legacies bequeathed free of duty (*a*); AND SHALL INVEST the residue of the said monies in the names or under the legal control of my trustees in any of the public stocks or funds or Government securities of the United Kingdom or India, or any colony or dependency of the United Kingdom, or upon freehold, copyhold, leasehold, or chattel real securities in England or Wales, or in or upon the shares, stocks, debentures, mortgages, or securities of any company or corporation or body or authority, whether commercial, municipal, county, local or otherwise, in the United Kingdom or India or any colony or dependency of the United Kingdom, but not in any other mode of investment (*b*); AND may vary the said stocks, funds, shares, and securities

Power to vary the investments.

It would seem that a general reference to duties (without specifying them) would suffice. See *Re Cayley*, [1904] 2 Ch. 781; and n. (*b*) on p. 591, *supra*. There is no settlement estate duty when the only life interest is that of the wife. Finance Act, 1894, s. 5 (1) (a). As to the rate of this duty, see now the Finance (1909-10) Act, 1910, s. 54.

(*a*) The following clause may be here inserted (when there is real estate) to avoid the operation of the Customs and Inland Revenue Act, 1888 (51 Vict. c. 8), s. 21, which, however, is not of so much importance as formerly, the duties under it, though no longer covered by the estate duty payable under the Finance Act, 1894, not being payable except in the cases mentioned in n. (*a*), at p. 591, *supra*:—"but so nevertheless that such legacies and duty shall be borne and paid primarily by and out of my personal estate, and that my funeral and testamentary expenses and debts shall be borne and paid primarily out of the proceeds of sale of my real estate, such proceeds of sale and personal estate being marshalled so as to give effect to this provision."

(*b*) Other powers of investment will be found *supra*, pp. 475—477. The words "in the names or under the legal control of my trustees" will be omitted if the clause, *infra*, allowing contributory mortgages is inserted.

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at their discretion; AND shall pay the income of the said trust monies, and of the investments for the time being representing the same, to my said wife during her widowhood: AND AFTER her death or marriage, shall hold the said trust premises and the income thereof, [IN TRUST for all or any of my issue (*a*), and in such manner and form in every respect, as my said wife shall, so long as she shall remain unmarried, by deed, or will, or codicil appoint; and IN DEFAULT of, and subject to, any such appointment,] IN trust for all my children, or any my child living at my death, who being sons or a son shall [have attained or shall] attain the age of twenty-one years, or being daughters or a daughter shall [have attained or shall] attain that age or [shall have married or shall] marry, and if more than one in equal shares (*b*): [PROVIDED ALWAYS, that no child who or whose issue shall take any part of the said premises under any such appointment as aforesaid shall, in default of appointment to the contrary, be entitled to any share of the unappointed part of the said premises, without bringing the share appointed to him or her, or his or her issue, into hotchpot]; PROVIDED ALWAYS and I declare that as to every daughter of mine living at my death who [shall have attained or] shall attain the age of twenty-one years or [shall have married or] shall marry, the share hereinbefore provided for such daughter, in the said residuary monies and

Trust to pay the income to testator's wife during widowhood;

—and afterwards to hold the funds in trust for testator's issue; as his wife shall appoint;

—and, in default of appointment, in trust for all his children who being sons attain twenty-one, or being daughters attain that age or marry.

Hotchpot clause.

(*a*) See n. (*c*) on p. 469, *supra*. The following addition at this point may generally be made with advantage:—

"if more than one in such shares and with such executory or other trusts and powers of advancement (either overreaching her interest or not), and other powers exerciseable at the discretion of the donees or donee or otherwise, and provisions of any description for their respective benefit, and generally in such manner," &c.

(*b*) See p. 592, *supra*, n. (*b*), and pp. 602, 613, *infra*.

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the investments representing the same shall (subject and without prejudice to the preceding trusts and powers including the power of varying investments [and the power of appointment hereinbefore given to my said wife] (*a*)) be held by my trustees upon the trusts and with and subject to the powers and provisions hereinafter declared and contained concerning the same (*b*), (that is to say) UPON TRUST to pay the income thereof to such daughter during her life, and so that whilst under coverture the same shall be for her separate use without power of anticipation, AND after the death of such daughter (as to both capital and income), IN TRUST for all or any of her issue (*c*), in such manner and form in every respect as she shall by deed, or will, or codicil appoint, AND IN DEFAULT of and subject to such appointment IN TRUST for all or any the children or child living at my death or born afterwards of such daughter, who being sons or a son attain the age of twenty-one years, or being daughters or a daughter attain that age or marry, and if more than one in equal shares: PROVIDED ALWAYS, that no child of such daughter, who or whose issue shall take any part of the same share under any such appointment as last aforesaid, shall in default of appointment to the contrary be entitled to any share in

Trusts of daughters' shares.

Trusts for the payment of income to the several daughters for life.

On their deaths the capital of their shares to be in trust for their respective issue as they shall appoint.

And in default of appointment in trust for their children, who attain twenty-one, or being daughters marry equally.

(*a*) By virtue of the Finance Act, 1896, s. 19, the settlement estate duty in respect of each settled share will be borne by the share in the absence of a provision to the contrary, such as the clause in square brackets at the foot of the text on p. 597, *supra*, in which the expression "estate duty" would include the settlement estate duty: see *Re Leveridge*, [1901] 2 Ch. 830, and cf. *Re Lewis*, [1900] 2 Ch. 177; *Re Maryon-Wilson*, *ib.* 565; *Re Pimm*, [1904] 2 Ch. 345; *Re Cayley*, *ib.* 781. The duty is payable on property settled contingently, and sect. 19 applies to this case (*Re Duke of St. Albans*, [1900] 2 Ch. 873).

(*b*) The object of these words is to show that the subsequent powers and provisions concerning daughters' shares, as well as the trusts, are to take effect subject to the prior interests and powers.

(*c*) See n. (*a*) on p. 599, *supra*.

the unappointed part thereof without bringing the share appointed to him or her, or his or her issue, into hotch-pot; AND if there shall be no child living at my death or born afterwards of such my daughter, who being a son attains the age of twenty-one years, or being a daughter attains that age or marries, then after the death of such my daughter, and such default or failure of her children (and subject to the trusts, powers and provisions herein contained or by statute implied), my trustees shall hold the share of such my daughter, and the income thereof IN TRUST for such person or persons and for such purposes as she shall by deed, or will, or codicil appoint; AND in default of and subject to such appointment as well the original share of such daughter as any share or shares which may accrue to her under the present provision or any other provision of accruer herein contained, shall (subject as aforesaid) accrue by way of addition to the shares or share of my other children or child living at my death, who being sons or a son attain the age of twenty-one years, or being daughters or a daughter attain that age or marry, equally between such shares if more than one, and so that every such addition to any share shall, as from the time of its accruer thereto, follow the destination of the share to which it shall so be added, and be for all purposes inseparably blended therewith (*a*). PROVIDED ALWAYS, that every daughter of mine living at my death may by deed executed in contemplation of

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Hotchpot clause.

In default of children entitled, the capital of each daughter's share to go as she shall appoint.

And in default of appointment to accrue to other shares.

Power for daughters to give life interests to their respective husbands.

(*a*) The following is an alternative form—

"BE HELD IN TRUST for such person or persons as under the statutes for the distribution of the effects of intestates would have become entitled thereto at the death of such daughter had she died possessed thereof as part of her personal estate, intestate, and without having been married, such persons, if more than one, to take as tenants in common in the shares in which they would have taken under the same statutes."

In default of appointment for her statutory next of kin, so as to exclude a husband.

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her marriage (though an infant), or by will or codicil appoint, that all or any part of the income of her original and accruing share or shares shall from and after her death be paid to any husband who may survive her, for his life or any less period with or without restriction, and any interest so appointed shall take effect in priority to the interests of her issue, but subject and without prejudice to the trusts and powers preceding her own interest. PROVIDED ALWAYS, that as to every daughter of mine dying in my lifetime leaving children or a child living at my death, the original and accruing share or shares herein provided for her in the event of her being living at my death shall be held upon the trusts and with and subject to the powers and provisions upon, with and subject to which the same would under this my will have been held if such daughter had survived me, and died immediately afterwards, having by will appointed that the income of the same share or shares should be paid to her surviving husband (if any) during his life.

Shares of daughters dying in testator's lifetime, leaving issue, to be held as if they had survived him (*a*).

PROVIDED ALWAYS, that as to every son of mine attaining the age of twenty-one years (*b*), and dying in my lifetime, leaving children or a child living at my death, as well the original as the accruing share or shares herein provided for such son in the event of his being living at my death in the said residuary monies and the investments representing the same, shall (subject and without prejudice to the preceding trusts and powers, including the power of varying investments [and the power of appointment hereinbefore given to my said wife]) be

Shares of sons dying in testator's lifetime, to be in trust for their children, and in default to accrue to other shares.

(*a*) This clause and that immediately following are required, because the testator's children take as a class, so as to exclude children predeceasing him. See p. 592, *supra*, n. (*b*).

(*b*) If it is desired to let in children of a son dying in the testator's lifetime under twenty-one and leaving issue, the words "attaining the age of twenty-one years" will be omitted here, and inserted after the words "in the event of his being living at my death."

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held in trust for all or any his children or child living at my death, who being sons or a son attain the age of twenty-one years, or being daughters or a daughter attain that age or marry, and if more than one in equal shares, and in default of any such child shall accrue by way of addition to the shares or share of my other children or child living at my death, who being sons or a son attain the age of twenty-one years, or being daughters or a daughter attain that age or marry, equally between such shares if more than one and so that every such addition to any share shall, as from the time of its accruer thereto, follow the destination of the share to which it shall be so added and be for all purposes inseparably blended therewith. PROVIDED ALWAYS, that my trustees may raise any part or parts not exceeding in the whole a moiety of the expectant or presumptive or vested share or portion for the time being of any child [other than a daughter] or grandchild of mine, under any of the trusts of this my will, and pay or apply the same for the advancement (*a*) or benefit of such child or grandchild in such manner as my trustees shall think fit, provided that during the pendency or contingency of any prior life or other interest the exercise of such power of advancement be with the consent in writing of the person or persons entitled thereto. [PROVIDED ALWAYS, that accumulations arising during the minority, or minority and discoverture as the case may be, of any child of mine, or any grandchild of mine, from the income of his or her share or portion, and not applied for his or her benefit under the statutory power in that behalf, shall form an accretion to the capital of such share or portion, so as to be blended and devolve along with the same (*b*).] [PROVIDED ALSO, that the receipt of any daughter or granddaughter of mine who shall have married or shall marry

Power of advancement.

Proviso that accumulations during minorities shall be capital.

Married female infants to be competent to give a discharge for the income of their respective shares.

(*a*) See *supra*, p. 593, n. (*a*).
(*b*) See *supra*, p. 62.

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under the age of twenty-one years shall, notwithstanding her infancy, be a sufficient discharge for the income of or arising from her share or portion after her marriage, and, except as regards any such daughter, for accumulations thereof previously arisen (*a*).] AND if the said residuary monies and the investments representing the same shall not (as to the whole or any part thereof) become absolutely vested under the trusts hereinbefore declared, then subject and without prejudice to those trusts, and after the failure or determination thereof, the same monies and investments and the income thereof, or so much thereof respectively as shall not have become vested or been applied under any of the trusts and powers hereinbefore declared and contained or by statute implied, shall be held IN TRUST for ——, his executors, administrators, and assigns (*b*). PROVIDED ALWAYS and I hereby declare that my trustees may postpone the sale, conversion, and collection of all or any part or parts of my said real and personal estate respectively, as long as they [in their absolute and irresponsible discretion] shall deem proper, [notwithstanding that the result of such postponement may be to injure or prejudice some or one of the persons beneficially interested (*c*)], but my real estate shall be considered as personalty from the time of my death, and during such postponement my trustees may manage and cultivate my real and leasehold estates, and exercise over and in relation thereto all such powers of

Ultimate trust on failure of trust for testator's own issue.

Power to postpone sale and conversion of real and personal estate, and direction as to intermediate income.

(*a*) See p. 62, *supra*. This clause may perhaps be convenient, but in practice it is seldom that any difficulty arises. If it is intended that a daughter who attains twenty-one or marries shall take the accumulations in respect of her share, this must be provided for. See *Re Bowlby*, [1904] 2 Ch. 685.

(*b*) See other forms of ultimate trusts, pp. 593, 594, *supra*, and p. 613, *infra*. Probably no such trust would be required in the present will.

(*c*) See *Re Crowther*, [1895] 2 Ch. 56; *Re Smith*, [1896] 1 Ch. 171; *Re Elford*, [1910] 1 Ch. 814. And as to the power generally, *Rowlls* v. *Bebb*, [1900] 2 Ch. 107.

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or with reference to leasing as a tenant for life thereof might exercise under sects. 6 to 13 (both inclusive) of the Settled Land Act, 1882, and the Settled Land Acts, 1889 and 1890 (*a*), and may make out of the income or capital of my real and personal estate any outlay which my trustees may consider proper for improvements, repairs, insurance, calls on shares, premiums on policies, or otherwise for the benefit or in respect of my real and personal estate (*b*). AND I DECLARE that the net rents and profits or other income produced from every or any part of my real or personal estate, previously to the conversion or collection thereof, shall be applied in the same manner in all respects as if the same were income arising from investments hereinbefore authorised, and that all income produced from my estate in its actual condition for the time being, whether consisting of property or investments of an authorised or of an unauthorised description, and whether of a wasting or permanent character, [and whether required for payment of my funeral and testamentary expenses and debts or not] shall as well during the first year from my death, as at all times afterwards, be applicable as income under the trusts of this my will, no part thereof being in any event liable to be retained as capital [or applied in or towards the payment of my funeral and testamentary expenses and debts or any of them or of any interest due at my death upon or in respect of the said debts or any of them], but no property not [for the time being] actually producing income (*c*) which shall form part of my estate shall

(*a*) See p. 574, n. (*a*), *supra*.

(*b*) *Re Lord de Tabley*, 31 L. J. (N. C.) 638; 75 L. T. N. S. 328; W. N. 1896, 162; and *Re Bellinger*, [1898] 2 Ch. 534. It is conceived that this power ought to be exercised generally in accordance with the rules laid down in the former case, but that the subsequent power to settle questions will enable the trustees to depart under special circumstances from the strict observance of those rules.

(*c*) See *Re Hubbuck*, [1896] 1 Ch. 754, the operation of which (as well as of *Re Lewis*, [1907] 2 Ch. 296) is conceived to be avoided by

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be treated as producing income, or as entitling any person to the receipt of income (*a*). AND I DECLARE that

Power to

the above clause with the addition of the words in square brackets; and compare *Re Morley*, [1895] 2 Ch. 738, where, however, there was apparently no express power to postpone, and no direction as to the application of interim income. As to the adjustment of the rights of tenants for life and remaindermen in a fund representing an authorised mortgage which has proved insufficient, see *Re Atkinson*, [1904] 2 Ch. 160; *Re Taylor's Trusts*, [1905] 1 Ch. 734; *Re Broadwood's Settlements*, [1908] 1 Ch. 115. The rule in *Allhusen* v. *Whittell*, L. R. 4 Eq. 295, is also (it is conceived) excluded by this clause.

(*a*) A power to appropriate specific parts of the estate in satisfaction of legacies or shares of residue will be found *infra*, p. 637, n. (*a*). If the testator has copyhold property subject to more than nominal fines on admittance, such property should not be included in the general devise in trust for sale, but be devised as follows, by which the expense of the trustees' or heir's admittance is saved. See Davidson's Prec. Conv. vol. ii. pt. i. 4th ed. p. 375, n. (*b*), and vol. iv. 3rd ed. p. 83, n. As to the legal effect of a devise of copyholds, see *Garland* v. *Mead*, L. R. 6 Q. B. 441; which, however, so far as respects the right of the heir to compel admittance, is believed (*ex relatione* the late Mr. C. I. Elton, Q.C.) to have been overruled in *R.* v. *Dudley*, 18th June, 1884.

Devise of copyholds, to be sold as part of the general real estate.

"I DEVISE all my copyhold hereditaments TO SUCH USES as my trustees shall by deed appoint; AND in default of and subject to any such appointment, TO THE USE of my trustees, their heirs and assigns, according to the custom of the manors whereof the said hereditaments may be respectively holden, and by and under the accustomed rents and services. AND I DECLARE that the aforesaid power of appointment over, and devise in default of appointment of, my said copyhold hereditaments are respectively given and made, UPON TRUST and to the intent that my trustees shall sell my said copyhold hereditaments, and apply the monies produced by such sale in the same manner in all respects as if the same hereditaments had been included in the general devise and bequest hereinbefore contained of my real and

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my trustees shall have the fullest powers of determining what articles of property pass under any specific bequest contained in this my will or any codicil hereto and of apportioning blended trust funds, and of determining whether any monies are to be treated as or paid out of capital or income [and also the value of any property whereof for any of the purposes of this my will or any codicil hereto it shall be necessary or desirable to ascertain the value], and generally of determining all matters as to which any doubt, difficulty, or question may arise under or in relation to the execution of any of the trusts or powers contained in this my will or any codicil hereto. AND I DECLARE that every determination of my trustees in relation to any such matter, whether made upon a question formally or actually raised or implied in any of the acts or proceedings of my trustees in relation to the premises, although such determination may not be in accordance with the strict rules of law [and although my trustees or any one or more of them may be personally interested in the result of such determination], shall bind all persons interested under this my will or any codicil hereto, and shall not be objected to or questioned upon any ground whatsoever. AND I DECLARE that the power of appointing a new trustee or new trustees of this my will, shall be exerciseable by my said wife during her widowhood; AND (in addition to the ordinary powers,

apportion blended funds and settle questions.

Power to appoint new trustees.

Additional indemnities to trustees (*a*).

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personal estate in trust for sale and conversion. AND I DECLARE that the power of leasing, and provisions as to application of rents and profits, and management until sale, hereinbefore contained as to my said real estate, shall be taken to include my said copyhold hereditaments, except that no lease shall be granted of any copyhold hereditaments without such licence, if any, as may be required by the custom."

(*a*) See the corresponding clauses on pp. 483—486, *supra*, and notes there.

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indemnities, and right to reimbursement by law given to trustees) my trustees may lend on the security of any hereditaments or property with any title which they shall in their absolute discretion think fit to accept, although the same may be less than or inferior to the title which a purchaser in the absence of a special contract is entitled to require: [AND may lend money in conjunction with any other person or persons by way of contributory loan, and allow the security for the same to be taken in the name or names of such person or persons jointly with my trustees or any of them, or exclusively or otherwise, and may accept any security subject to prior incumbrances, and agree that money lent shall not be called in for a fixed term not exceeding five years, and may also, pending or whilst in search of an investment of any description, deposit trust money at a bank at interest or otherwise, and also may allow securities and documents belonging to my estate to be placed and remain in their joint names, or on their joint behalf, in the custody of any banker or solicitor or other agent without retaining by means of keys or otherwise the exclusive control over the same (*a*); and may from time to time discharge, renew, or effect the transfer of any incumbrance for the time being affecting my estate or any part thereof, upon such terms as they shall think fit, or make in relation thereto, any other arrangement which they may think fit:] AND it shall not be obligatory on my trustees, unless requested in writing so to do by some person interested (and then only if they shall consider the request reasonable and compliance therewith desirable), to realize or call in any investment which or the security for which shall have become depreciated, and no act or omission in any such respect shall be chargeable as a breach of trust: AND no executor or trustee of this

Power to employ agents.

(*a*) See *Field* v. *Field*, [1894] 1 Ch. 425; *Re De Pothonier*, [1900] 2 Ch. 529; *Re Sisson's Settlement*, [1903] 1 Ch. 262.

my will shall under any circumstances be bound to act personally, but every such executor or trustee may instead of acting personally employ, at the expense of my estate or the trust property, any professional or business person or other agent to transact any business, receive, pay, or deliver any money or securities, or do anything in relation to my estate or the trust property without being answerable for loss arising thereby: AND every such executor or trustee acting in relation to my estate or the trust property in any professional or business capacity, shall in respect of acts so done (and without regard to the question whether they strictly belong to such profession or business, or are such as a trustee could do personally) be entitled to charge (*a*) and be remunerated out of my

Power for professional trustee to charge.

(*a*) See *Clarkson* v. *Robinson*, [1900] 2 Ch. 722; *Re Chalinder and Herington*, [1907] 1 Ch. 58, and p. 485, *supra*, n. (*d*). As to the omission of the receipt and trustee clauses formerly employed, and the expediency of inserting in their place the declaration in the text, see *supra*, p. 472, n. (*c*). The trustee clauses, which, before the passing of 23 & 24 Vict. c. 145, were usually employed in wills, were as follows:—

"AND I HEREBY DECLARE that the receipt of the trustees or trustee for the time being, acting in the execution of any of the trusts hereof, for the purchase-money of property sold, or for any monies, funds, shares, or securities paid or transferred to them or him in pursuance hereof, or of any of the trusts hereof, shall effectually discharge the purchaser or purchasers, or other the person or persons paying or transferring the same, therefrom, and from being concerned to see to the application thereof. AND I HEREBY DECLARE, that, if the said trustees hereby appointed, or any of them, shall die in my lifetime, or if they or any of them, or any trustee or trustees to be appointed as hereinafter provided, shall after my death die, or desire to be discharged, or refuse or become incapable to act, then and so often the said trustees or trustee (and, for this purpose, every retiring or refusing trustee shall be considered a trustee), may appoint a new trustee or new trustees in the place of the trustee or trustees so dying, or desiring to be discharged, or refusing or becoming incapable to act; AND, upon every such appointment, the said trust premises shall be so transferred, that the same may become vested in the

Trustees' receipt clause.

Power to appoint new trustees.

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estate or the trust property as a stranger. IN WITNESS, &c.

new trustee or trustees, jointly with the surviving or continuing trustees or trustee, or solely, as the case may require; and every such new trustee shall (as well before as after the said trust premises shall have become so vested) have the same powers, authorities, and discretions as if he had been hereby originally appointed a trustee. AND I DECLARE, that the trustees for the time being of this my will shall respectively be chargeable only with such monies as they respectively shall actually receive, and shall not be answerable for each other, nor for any banker, broker, or other person in whose hands any of the trust monies shall be placed, nor for the insufficiency or deficiency of any stocks, funds, shares, or securities, nor otherwise for involuntary losses; AND that the said trustees for the time being may respectively reimburse themselves out of the trust premises all expenses incurred in or about the execution of the aforesaid trusts and powers."

Trustees' indemnity clause and power of reimbursement.

As to the propriety of inserting a devise of trust and mortgage estates (if any) not devolving on the testator's executors, see the comments, *supra*, p. 51, on sect. 30 of the Conv. Act, 1881 (App. IV., *infra*). As to the law governing the devolution of trust and mortgage estates, independently of the Act, see Davidson's Prec. Conv., 3rd ed. vol. iv. p. 58, n. (*d*); see also 1 Jarm. on Wills, 5th ed. vol. i. pp. 643 *et seq.* The following is a form of devise of copyhold trust and mortgage estates for insertion when required, which, however, will be seldom:—

Devise of copyhold trust and mortgage estates.

"I DEVISE all the copyhold and customary hereditaments which at my death shall be vested in me as tenant upon the court rolls of any manor upon any trust or by way of mortgage unto my trustees, their heirs and assigns, upon the trusts and subject to the equity of redemption subsisting therein respectively, but the money secured on such mortgages shall be considered as part of my personal estate."

The power to arrange and compromise claims on their testator's estate, especially given to the executors in the first five editions of this work, is conferred on all executors by sect. 21 of the Trustee Act, 1893 (App. XVI., *infra*).

CXLIV.

PRECEDENT CXLIV.

IN FAVOUR OF WIFE FOR LIFE, AND CHILDREN AND GRAND-CHILDREN.

WILL *of* REAL *and* PERSONAL ESTATE *for the Benefit of the Testator's* WIFE *for Life, and his* CHILDREN, *and the* CHILDREN *of any* CHILD *predeceasing him.* TRUST *of* FURNITURE *for wife and children.* OPTION *for son to* PURCHASE *real estate.*

I, A. B., of, &c. [*clause revoking prior wills, &c., appointment of executors and trustees, and declaration as to devolution of trustees' powers, ut supra*, pp. 595, 596]. I BEQUEATH to my trustees, their executors and administrators, all my fixtures, furniture, plate, plated articles, linen, glass, china, earthenware, articles of *virtu* or curiosity, books, and other articles of personal or domestic use and ornament (free from legacy duty (*a*)), UPON TRUST, to permit my wife C. B. to use and enjoy the effects hereinbefore bequeathed during her life, she keeping the same properly insured against fire [and burglary], and properly preserving the same from deterioration, reasonable wear and tear excepted; AND AFTER HER DEATH, I direct that my trustees shall appropriate and divide the same effects unto and among such of my children as shall be living at the death of the survivor of me and my said wife and as being sons or a son attain the age of twenty-one years, or being daughters or a daughter attain that age or marry in equal shares as nearly as may be, but so that such division shall not be questioned by reason of any alleged inequality in the value of the shares or for any other reason whatsoever, but shall be absolutely binding and conclusive. AND I DECLARE

Bequest of furniture, plate, &c., to trustees;

—upon trust for testator's wife for life;

—after her death for division amongst testator's children living at the period of distribution.

Inventory to be taken (*b*).

(*a*) See p. 591, *supra*, n. (*a*), p. 597, *supra*, n. (*b*).

(*b*) It is sometimes provided that an inventory shall not be required. Compare the corresponding clauses in relation to

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my will to be, that (if my wife shall survive me) an inventory of the said effects [except such of them as from their trifling value or perishable nature or for any other reason it may be considered inexpedient to include in such inventory, as to which I give the fullest discretion to my trustees] shall be made as soon as conveniently may be after my death, and signed by my said wife, and that such inventory shall be kept in the custody of my trustees, and that they after taking such inventory and procuring the same to be signed by my said wife shall not afterwards during her life be in any way liable for or concerned to see to the custody, insurance, or preservation of the said effects or any of them. AND I empower my trustees after the death of my said wife to provide for the custody, preservation and insurance (at the expense of my general estate) of the effects, which, on the division aforesaid, may have been appropriated as the presumptive share of any minor child, or to deliver to such child any of the effects so appropriated, but without incurring any responsibility for or in relation to the exercise of either of these powers. AND I ALSO EMPOWER my trustees to sell any effects so appropriated, investing the proceeds for the eventual benefit of the child or children who would otherwise have become entitled thereto. [*General devise and bequest of real and personal estate, upon trust for sale and conversion; trust for payment of funeral and testamentary expenses and debts; trust for investment and power to vary investments, ut supra*, pp. 597, 598.] AND SHALL PAY the income of the said trust monies and the investments for the time being representing the same to my said wife, during her life, such income in the event of her remarriage to be for her separate use without power of anticipation, AND AFTER her death shall hold the said trust premises and the income thereof in trust for such of my

Power to provide for preservation and insurance of effects appropriated to minor child;

—and to deliver any such articles to the minor.

Power to sell, with directions as to proceeds.

General devise of real estate and bequest of personalty in trust for sale and conversion, &c.

Trusts for wife for life;

—afterwards for children of

chattels bequeathed as heirlooms, *infra*, p. 658, and the note, p. 659.

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children living at my death, and such of my grandchildren living at my death, and being children of any child of mine having predeceased me, as being male attain the age of twenty-one years, or being female attain that age or marry, and if more than one in equal shares per stirpes, so that my children taking under this trust, shall take in equal shares, and the children, taking under this trust, of any child of mine having predeceased me, shall take equally between them the share which the parent would have taken, had he or she survived me; PROVIDED ALWAYS, that my trustees may after the death of my wife, or in her lifetime with her consent in writing, raise any part or parts not exceeding one half of the then expectant, presumptive, or vested share or fortune of any child or grandchild under the trusts hereinbefore declared, and apply the same for his or her advancement or benefit (*b*). AND IF there shall be no child of mine or child of a deceased child of mine, living at my death, who, being male, attains the age of twenty-one years, or being female attains that age or marries, then from and after the death of my said wife and such default or failure of children and grandchildren, I BEQUEATH the said monies, and the investments representing the same, or so much thereof as shall not have become vested or been applied under the trusts or powers herein contained or implied by statute, unto, &c. (*c*). [*Power to postpone conversion, with ancillary provisions, ut supra*, pp. 604—606 (*d*).

testator, and children of any child predeceasing him (*a*).

Advancement clause.

Disposition in default of children or grand-children taking under preceding trusts.

(*a*) As to this form of trust, see *supra*, p. 592, n. (*b*). And compare Precedent CXLVI., *infra*, where there is no preceding life interest, and the trust for investment is omitted.

(*b*) Maintenance and accumulation clauses will be found *supra*, p. 594, n., which, if their insertion is desired, may easily be modified to suit this will.

(*c*) See p. 594, n. (*a*), *supra*.

(*d*) The following is a form (to follow here) of an option for one of the testator's sons to purchase part of his real estate :—

" PROVIDED ALWAYS and I declare that such one of my

Power to son

PRECEDENT CXLIV.

IN FAVOUR OF WIFE FOR LIFE, AND CHILDREN AND GRAND-CHILDREN.

Power to appoint new trustees (the power being given to the wife for life), and other trustee clauses, ut supra, pp. 607—610.] IN WITNESS, &c.

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to purchase real estate at a valuation.

sons as shall first after my death become entitled as tenant for life or in tail male to the —— estate under the limitations thereof contained in an indenture dated, &c., and expressed to be made between [*parties*], and attain the age of twenty-one years, shall have the option, to be declared within twelve calendar months after he shall so become entitled or attain the age of twenty-one years, which shall last happen, by a notice in writing to be given to my trustees, of purchasing the whole or any part of my real estate situate at, &c., hereinbefore devised in trust for sale, which may be contiguous to or convenient to be held with the said —— estate, in which case the same shall be sold to such son at a price to be agreed upon between him and my trustees, or if they are unable to agree, then at a price to be determined by the valuation of two indifferent persons, one to be chosen by each party, or by an umpire to be chosen by the two valuers before they proceed to act in the valuation, such price with interest thereon at the rate of £4 p.c.p.a. from the day of my death or the day when such son shall attain the age of twenty-one years which shall last happen to be either paid by such son on the completion of the purchase or (if my said wife shall either have died previously to the exercise of such option or shall consent thereto in writing) to be brought into account by such son in the division of my residuary estate, and the lands and premises so purchased shall be conveyed to the son so purchasing the same, and his heirs, or as he or they shall direct, and the rents and profits thereof shall belong to such son from the day of my death or the day when such son shall attain the age of twenty-one years which shall last happen: PROVIDED ALWAYS that no purchaser of any

CXLV.

WILL *of* REAL *and* PERSONAL ESTATE. BEQUEST *of* LEASEHOLD HOUSE *to Testator's Wife*. PECUNIARY LEGACIES. SPECIFIC DEVISE *of a Freehold Farm, subject to a Mortgage*. RESIDUE *to one Son*.

PRECEDENT CXLV.

MAKING SPECIFIC AND PECUNIARY BEQUESTS, AND SPECIFIC DEVISE, AND GIVING RESIDUE TO ONE.

I, A. B., of, &c. [*clause revoking prior wills, &c., ut supra*, p. 595]. I BEQUEATH to my wife C. B. free of duty (*a*) all my furniture, plate, plated articles, linen, china, glass, wine, liquors, consumable stores, and articles of household and domestic use and ornament (*b*); I BEQUEATH to my said wife free of duty (*a*) the sum of £——, to be paid to her within one calendar month after my death, and the further sum of £——, to be paid to her within three years after my death, with interest thereon at the rate of £— per cent. per annum from the day of my death, to be paid by equal half-yearly payments, and the first thereof to be made at the end of six calendar months from my death; I BEQUEATH to my said wife free of duty (*a*) my leasehold messuage, No. —— in —— Street, London, she paying the rent reserved by the lease under which I hold the same, and performing and observing the covenants by the lessee and conditions therein contained, and indemnifying my executors and administrators therefrom, and from all actions and

General bequest of furniture and household goods and chattels to testator's wife.

Bequest of pecuniary legacies,

—and of a leasehold house.

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part of my real estate under the said trust for sale shall be concerned to see or enquire whether such option to purchase as aforesaid shall have been exercised or be affected by notice that such option has been exercised or remains exerciseable."

See the option to purchase a business, *infra*, p. 628.

(*a*) See *supra*, p. 591, n. (*a*).

(*b*) See a fuller form of such a bequest, *supra*, p. 596.

PRECEDENT CXLV.

MAKING SPECIFIC AND PECUNIARY BEQUESTS, AND SPECIFIC DEVISE, AND GIVING RESIDUE TO ONE.

demands in respect thereof; I BEQUEATH to my son E. B., and to each of my daughters, F. B., G. B., and H. B., the sum of £——, free of duty; I DEVISE unto my son I. B., his heirs and assigns, my freehold farm lands and hereditaments situate in or near the parish of ——, in the county of ——, with the appurtenances (*a*), subject nevertheless in exoneration (*b*) of my personal estate to the payment of a principal sum of £——, now owing to X. Y. on the security of a mortgage thereof, and the interest for the same, and subject to the payment of a proper rateable part of the estate duty payable under this my will (*c*). AND I HEREBY DEVISE AND BEQUEATH all my real and personal estate, except what I otherwise dispose of by this my will or any codicil hereto, unto my son A. B., his heirs, executors, administrators, and assigns, charged as to my real estate, in aid of my personal estate, with the payment of [my debts and

Pecuniary legacies to children.

Specific devise to one son;

—subject to a mortgage;

—and to estate duty.

General residuary gift to one son, and

(*a*) Where the land devised is registered, it may conveniently be described or referred to by its registered number.

(*b*) To avoid the numerous questions which have arisen on this point (see Jarman on Wills, 5th ed. vol. ii. pp. 1439 *et seq.*), it is proper, in devising mortgaged lands, to state expressly whether the testator intends the mortgage debt to be charged thereon in exoneration of his personal estate, or not. Under 17 & 18 Vict. c. 113 (Locke King's Act), a devisee in a will made since 1854, takes subject to any mortgage charged on the devised land, unless the testator shall have signified a contrary intention. By 30 & 31 Vict. c. 69, as to the will of a testator dying after 31st Dec. 1867, and by 40 & 41 Vict. c. 34, as to a testator or intestate dying after the 31st Dec. 1877, the provisions of the above Act are amended and extended, and are made to apply to a vendor's lien for unpaid purchase-money.

(*c*) This may be added if in accordance with the intention; but it is unnecessary, because, although under the Land Transfer Act, 1897, Part I. (App. XVIII., *infra*), real estate passes to the executor as such, sect. 2, sub-sect. 3, of the Act preserves the incidence of taxation previously existing, and accordingly sect. 9 of the Finance Act, 1894, would apply: see *Re Sharman*, [1901] 2 Ch. 280; *Re Spencer Cooper*, [1908] 1 Ch. 130.

funeral and testamentary expenses, and (*a*)] the pecuniary legacies hereinbefore bequeathed, and the duty on the bequests hereinbefore made free of duty. And I hereby appoint my said son A. B. sole executor of this my will. In witness, &c. (*b*).

Precedent CXLV.

Making specific and pecuniary bequests, and specific devise, and giving residue to one.

appointment of him as executor.

CXLVI.

Will *of a Widower.* Real *and* Personal *Estate.* Bequest *of pecuniary* Legacies, *and a* Life Annuity. Settlement *of a sum of Money on an unmarried Daughter.* Bequest *of a gross sum* to a married Daughter. Residue, *for* Sons *equally at* 21; *In default, for the two* Daughters *equally.*

Precedent CXLVI.

In favour of sons and daughters, with gift of annuity, and settlement of daughter's portion.

I, A. B., of, &c. [*clause revoking prior wills, &c., appointment of executors and trustees and declaration as to devolution of trustees' powers, ut supra,* pp. 595, 596. *Bequests to executors and servants, ut supra,* p. 596]. I bequeath to my confidential clerk, X. Y., and his assigns, during his life, an annuity of £ —— (*c*), to be payable by equal quarterly payments, and the first such payment to be made at the end of three calendar months after my death (*d*); I bequeath to my daughter C. D., the wife of

Bequest to executors who prove; —to domestic servants.

Bequest of life annuity.

Bequest to married daughter.

(*a*) These words seem to be rendered unnecessary by the Land Transfer Act, 1897, Part I., sect. 2, sub-sect. 3.

(*b*) This Precedent supposes all the testator's children to be adult.

(*c*) See p. 522, n. (*a*), *supra.*

(*d*) See as to the times for payment of annuities bequeathed by will, 2 Williams' Executors, 10th ed, p. 1116. The following clause (to be inserted immediately after the gift of the annuities) authorises the trustees to provide for annuities bequeathed, either by purchasing government or other annuities for the lives of the annuitants, or by appropriating a fund for the purpose:—

"And I authorise my trustees to provide for the pay- Power to

PRECEDENT CXLVI.

IN FAVOUR OF SONS AND DAUGHTERS, WITH GIFT OF ANNUITY, AND SETTLEMENT OF DAUGHTER'S PORTION.

E. D., the sum of £ — (*a*) [with interest for the same

purchase or to appropriate fund to answer annuity.

ment of the said annuities, either by purchasing like annuities in the names of the annuitants respectively or in the names of my trustees from the government or any public company, to be applied accordingly, or by appropriating for that purpose a fund which shall consist of stocks, funds, shares, or securities hereinafter authorised as investments, and of which the annual income at the time of appropriation shall be sufficient to answer such annuities, with power in case of the annual income of the appropriated fund at any time proving insufficient, to resort to the capital of the same fund for payment of such annuities, and so that upon the death of each of the said annuitants, a proportionate part of the capital of the same fund, or of so much thereof as shall not have been resorted to as aforesaid, shall revert to and form part of my residuary estate: And until the said annuities respectively shall be provided for in one or other of the modes aforesaid, I direct that the same shall be paid out of the income of my residuary estate: But I declare that when and so soon as any such annuity shall have been so provided for, the same shall cease to be charged upon either the income or the capital of my residuary estate."

If this clause should be inserted the subsequent direction to appropriate a fund would be omitted, and in lieu of that direction would be inserted the words: "And provide in manner hereinbefore directed for payment of the several annuities hereinbefore bequeathed." The clause might be modified by omitting the power to resort to capital, and substituting a direction that in the case mentioned the annuities should abate proportionately, and omitting the subsequent mention of the part not resorted to for payment of the annuities. Cp. a shorter form of such a power at p. 504, *supra*. And as to the position and rights of annuitants generally with reference to the distribution of the residuary estate, see *Re Parry*, 42 Ch. D. 570; *Harbin* v. *Masterman*, [1896] 1 Ch. 351.

(*a*) As this sum is intended to fall within the terms of a covenant

PRECEDENT CXLVI.

IN FAVOUR OF SONS AND DAUGHTERS, WITH GIFT OF ANNUITY, AND SETTLEMENT OF DAUGHTER'S PORTION.

after the rate of £ per cent. per annum from my death], in addition to, and not in substitution for, the like sum of £——, covenanted to be paid by me, or my executors or administrators, to the trustees of her marriage settlement in my lifetime, or within six calendar months after my death: I BEQUEATH to my trustees, their executors, and administrators, the sum of £— — [with interest for the same after the rate of £ per cent. per annum from my death] upon the trusts hereinafter declared concerning the same (*a*). [*General devise and bequest of real and personal estate, in trust for sale and conversion, ut supra*, p. 597, *proceeding*.] AND shall, out of the monies to arise from such sale, collection, and conversion, and the money of which I shall be possessed at my death, PAY my funeral and testamentary expenses [including the estate duty payable on my death in respect of my residuary real estate and the increment value duty (if any) in respect of the same estate or any part or parts thereof], and debts (including the said sum of £—— so covenanted to be paid as aforesaid), and the legacies other than specific, bequeathed by this my will, or any codicil hereto, AND APPROPRIATE, or purchase, in their names, a sum of £—— Two-and-a-half per cent. Consolidated Stock, to answer the said annuity to the said X. Y. (which said sum I hereby direct shall, subject to the payment of the said annuity, be considered as part of my residuary personal estate), AND SHALL HOLD the residue of the said monies (*b*), IN TRUST for all my sons, or any my son who shall attain the age of twenty-one years, and if

Bequest of sum of money to trustees on trusts after declared.

Trusts of monies to arise from sale and conversion.

To pay debts and legacies.

To appropriate stock to answer an annuity.

Trusts of residuary monies for sons.

for the settlement of after-acquired property, it is bequeathed directly to the daughter.

(*a*) As to legacy duty see p. 591, *supra*, n. (*a*).

(*b*) The usual clause providing for the investment of the trust funds is here omitted. In its absence the duty of the trustees will be to invest the funds under the powers conferred upon them by the Trustee Act, 1893, App. XVI., *infra*. A general power of investment will be found *infra*, p. 635.

PRECEDENT CXLVI.

IN FAVOUR OF SONS AND DAUGHTERS, WITH GIFT OF ANNUITY, AND SETTLEMENT OF DAUGHTER'S PORTION.

more than one in equal shares: PROVIDED ALWAYS, that my trustees may raise any part or parts not exceeding one-half of the then expectant or presumptive or vested share of any son of mine under the trust hereinbefore declared, and apply the same for his advancement or benefit (*a*). AND I HEREBY DECLARE, that if no son of mine shall attain the age of twenty-one years, the said residuary monies, and the income thereof or so much thereof respectively as shall not have become vested or been applied under any of the trusts or powers herein contained or by statute implied, shall after such default or failure of my sons as aforesaid, be held UPON THE TRUSTS following (that is to say), as to one equal moiety thereof, IN TRUST for my said daughter C. D., and as to the remaining equal moiety thereof, UPON THE TRUSTS hereinafter declared of the said sum of £—— (*b*). AND I HEREBY DECLARE, that my trustees shall invest the said sum of £—— (*b*), in their names or under their legal control in [*remainder of trust for investment and power to vary investments, ut supra*, p. 598], AND SHALL pay the income of the said sum of £——, and of the investments for the time being representing the same, unto my daughter D. B., during her life, but so that whenever she shall be under coverture, the same shall be for her separate use, without power of anticipation; AND after her death shall hold the said sum of £—— and investments, and the income thereof, IN TRUST for all or any such one or more, exclusively of the other or others, of the issue of the said D. B. (*c*), in such manner in every respect as the said D. B. shall at any time, whether covert or sole, by deed or will or codicil appoint: AND IN DEFAULT of and subject to any such appointment, IN

Advancement clause.

If no son shall become entitled under the preceding trust, one moiety of residuary monies to be in trust for married daughter.

Other moiety on trusts of the unmarried daughter's legacy.

Trusts of sum bequeathed to trustees;

—to pay the income to unmarried daughter for life;

—after her death in trust for her issue as she shall appoint.

In default of appointment for her children.

(*a*) As to the omission of the maintenance and accumulation clauses here, see *supra*, p. 593, n. (*a*).

(*b*) The sum bequeathed to the trustees on trusts after declared.

(*c*) As to this, see *supra*, p. 469, n. (*c*).

PRECEDENT CXLVI.

IN FAVOUR OF SONS AND DAUGHTERS, WITH GIFT OF ANNUITY, AND SETTLEMENT OF DAUGHTER'S PORTION.

TRUST for all the children or any the child of the said D. B., who being sons or a son shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or marry, and if more than one in equal shares: PROVIDED ALWAYS, that no child of the said D. B., who or whose issue shall take any part of the said premises, under any such appointment as aforesaid, shall, in default of appointment to the contrary, be entitled to any share of that part of the said premises of which no such appointment shall have been made, without bringing the share appointed to him or her or his or her issue into hotchpot: PROVIDED ALSO that my trustees may, after the death of my said daughter D. B., or in her lifetime, with her consent in writing, raise any part or parts of the then expectant, presumptive, or vested share, of any child of the said D. B. under the trusts hereinbefore declared, and apply the same for the advancement or benefit of such child. AND I HEREBY DECLARE that if there shall be no child living at my death or born afterwards of my said daughter, D. B., who, being a son, shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, THEN, from and after the death of my said daughter D. B., and such default or failure of children as aforesaid, my trustees shall hold the said sum of £— —, and the investments for the time being representing the same, and the income thereof, or so much thereof respectively as shall not have become vested, or been applied under any of the trusts and powers herein contained or by statute implied, IN TRUST for such person or persons, and generally in such manner and form in all respects as my said daughter D. B. shall, whether covert or sole, by deed, or will or codicil, appoint: AND IN DEFAULT of any such appointment, and so far as no such appointment shall extend, IN TRUST for my said daughter C. D. (*a*). [*Power to postpone*

Hotchpot clause.

Advancement clause.

Disposition in default of children entitled under preceding trust.

In trust as daughter shall by deed or will appoint.

In default of appointment in trust for married daughter.

(*a*) There would generally follow a power for the daughter to

PRECEDENT CXLVI.

IN FAVOUR OF SONS AND DAUGHTERS, WITH GIFT OF ANNUITY, AND SETTLEMENT OF DAUGHTER'S PORTION.

conversion with ancillary provisions, ut supra, pp. 604–606. *Power to appoint new trustees to be* "exerciseable by my said daughter D. B. during her life," *and other trustee clauses, ut supra*, pp. 607–610." AND I HEREBY APPOINT my said daughter C. D. and my said son-in-law E. D. guardians of my infant children. IN WITNESS, &c.

Appointment of guardians.

CXLVII.

PRECEDENT CXLVII.

GIVING CHARITABLE LEGACIES, PROVIDING ANNUITY FOR WIFE, AND SETTLING A SON'S PORTION.

DEVISE *of* REAL *and* PERSONAL *Estate*. CHARITABLE *and other* PECUNIARY *and* SPECIFIC *Legacies, with* PROVISIONS *relating to Legacies to Infants:* ANNUITY *to the Testator's Wife:* TRUSTS *for benefit of one Son, his Wife and Children:* RESIDUE *for the benefit of Testator's other children equally.*

I, A. B., of, &c. *clause revoking prior wills, &c., appointment of executors and trustees, and declaration as to devolution of trustees' powers, ut supra*, pp. 595, 596". I confirm the settlement made in contemplation of my marriage with my wife M. B., and declare that the provisions hereby made for my said wife and my children shall be in addition to and not in satisfaction of those made or agreed to be made for them by such settlement.

Confirmation of testator's marriage settlement.

Bequest of pecuniary and specific legacies.

I BEQUEATH to my friends —— and —— £—— each. I BEQUEATH to my wife absolutely the tea and coffee service presented to me by . I BEQUEATH all the rest of my plate and plated articles to my son C. B.

Bequest of charitable legacies.

I BEQUEATH to the following charitable (*a*) societies and institutions the sums hereinafter mentioned, that is to say: To the

appoint a life interest to any husband, which may be adapted from the form, *supra*, pp. 601, 602.

(*a*) See the Mortmain and Charitable Uses Act, 1891 (54 & 55 Vict. c. 73), in effect removing the restrictions placed on charitable dispositions by will of realty and personal estate savouring of realty.

PRECEDENT CXLVII.

GIVING CHARITABLE LEGACIES, PROVIDING ANNUITY FOR WIFE, AND SETTLING A SON'S PORTION.

—— Hospital, £——; to the —— Asylum, £——; to the —— Society, £——; and to the —— Institution, £——; AND I DECLARE that the receipts of the respective treasurers or secretaries for the time being, of the said societies and institutions respectively, shall be sufficient discharges for the same. I BEQUEATH to my said wife £——, to be paid to her within one month after my death. I ALSO BEQUEATH to my said wife, during her life, an annuity of £——, to be payable quarterly, and the first quarterly payment thereof to be made at the end of three calendar months after my death (*a*). I BEQUEATH the sum of £—— to each of my nephews and nieces next hereinafter named (that is to say) — PROVIDED ALWAYS that as to each such legatee who being a nephew shall be under the age of twenty-one years or being a niece shall be under that age and a spinster at my death, his or her legacy aforesaid shall be invested by my trustees in or upon any of the stocks, funds, or securities hereinafter authorised for the investment of the residuary monies hereinafter mentioned, and that upon the legatee attaining the age of twenty-one years, or being a niece marrying under that age, the investments representing his or her legacy and the income of the same or so much thereof respectively as shall not have been applied under any power herein contained or by statute implied, shall be transferred or paid to him or her; but if such legatee shall die under the age of twenty-one years and being a niece without having been married, the same shall sink into and become part of my residuary personal estate: PROVIDED ALSO that my trustees may at any time or times apply any part or parts or the whole of the legacy to which any such legatee shall be entitled in expectancy as aforesaid for his or her preferment, advancement, or benefit as they shall think fit. [I declare that the several bequests hereinbefore contained shall be free of all

Bequest of gross sum and an annuity to the testator's wife.

Legacies to nephews and nieces with incidental provisions as regards the legacies of infants;

—and for the advancement of infants.

(*a*) See *supra*, p. 522, n. (*a*).

PRECEDENT CXLVII.

GIVING CHARITABLE LEGACIES, PROVIDING ANNUITY FOR WIFE, AND SETTLING A SON'S PORTION.

duty (*a*).] [*General devise and bequest of real and personal estate in trust for sale and conversion; trust for payment of funeral and testamentary expenses and debts, ut supra*, p. 597, *proceeding*] and the legacies (other than specific) bequeathed by this my will or any codicil hereto [and the legacy duty thereon], AND SHALL PURCHASE, in the names of my trustees, a sufficient sum of stock to answer the said annuity of £——, and empower my said wife to receive the dividends thereof, if she shall prefer to do so; AND SHALL set apart, or appropriate, the sum of £— — (without any deduction in respect of settlement estate duty, it being my intention that such duty shall be paid as part of my testamentary expenses) (*b*), to bear interest after the rate of £— per cent. per annum from my death, until the appropriation thereof, and to be held upon the trusts hereinafter declared of the same; AND SHALL INVEST [*trust for investment of residue and power to vary investments, ut supra*, p. 598]. AND SHALL HOLD the said residuary monies and the investments for the time being representing the same (including, after the death of my said wife, the fund so to be provided for payment of the said annuity), and the income thereof, IN TRUST for such of my children, other than and except my son D. B., living at my death, or having died in my lifetime leaving issue living at my death (*c*), as being sons or a son, attain the age

Trusts of monies to arise from sale and conversion of real and personal estate.

To pay debts and legacies.

And to purchase stock to answer the annuity.

And to appropriate a sum on trusts after declared.

Residue in trust for all the testator's children, other than one son, at twenty-one or marriage.

(*a*) See n. (*a*) at p. 591, *supra*.

(*b*) In the absence of such an expression of intention, the duty would be payable out of the settled legacy; see Finance Act, 1896, s. 19. As to the rate, see now the Finance (1909-10) Act, 1910, s. 54.

(*c*) As to the frame of this trust for children, see n. (*b*), p. 592, *supra*. The mode of framing a gift to a class, so as, under sect. 33 of the Wills Act alone, to give a share to any member thereof, who may predecease the testator, but leave surviving issue, can be adopted only where the devisees or legatees are lineal descendants of the testator. A gift by will to a class so described, of persons not being such descendants, would carry the whole property to

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of twenty-one years, or being daughters or a daughter attain that age or marry, and if more than one in equal shares [and so that the share of any child having died in my lifetime leaving issue as aforesaid shall devolve on his or her representatives as part of his or her personal estate in the same manner as if he or she had survived me and died immediately after me] [*advancement clause, ut supra*, p. 593, *omitting the reference to the wife*]. AND I HEREBY DECLARE that, if there shall be no child of mine, other than my said son D. B., living at my death, or having died in my lifetime leaving issue, who being a son attains the age of twenty-one years, or being a daughter attains that age or marries, THEN the said residuary monies, and the investments for the time being representing the same, and the income thereof, or so much thereof respectively as shall not have become vested or been applied under any of the trusts and powers herein contained or by statute implied, shall be held, UPON THE TRUSTS hereinafter declared of the said sum of £——. [*Power to postpone the sale and conversion of real and personal estate, with ancillary provisions; ut supra*, pp. 604—606.] AND I HEREBY DECLARE that my trustees shall invest the said sum of £—— in their names, or under their legal control, in any of the stocks, funds, shares, or securities hereinbefore authorised for the investment of the said residuary monies, AND SHALL (*a*) PAY the

In default of children entitled under preceding trusts, the residue to be held on trusts declared of sum appropriated for the excluded son.

Sum appropriated to be invested in the names of trustees.

Income to be paid to tes-

those only who survive the testator; see *Re Coleman and Jarrom*, 4 Ch. D. 165. The words in brackets would, it is considered, prevent a lapse, even in a case not coming within sect. 33 of the Wills Act. As, under sect. 32 of the Wills Act, a devise in tail does not lapse by the death of the devisee before the testator, but leaving issue inheritable under the entail to survive the latter, a devise in tail to a class, whether descendants of the testator or not, may be properly made to include members predeceasing the testator and leaving surviving issue.

(*a*) The words: "If my said son D. B. shall not at my death be bankrupt [and shall not have assigned, charged,

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income of the said sum of £——, and of the investments for the time being representing the same, unto my said son D. B. until he shall die, or become bankrupt, [or assign, charge, or incumber, or attempt to assign, charge, or incumber, the same, or any part thereof,] or do or suffer something whereby the same or some part thereof, would by operation of law or otherwise, if belonging absolutely to him, become vested in or payable to some other person or persons; AND AFTER THE FAILURE or determination of the trust hereinbefore declared in favour of my said son D. B. shall, during his life, apply so much of the said income as to my trustees shall seem proper, for the maintenance or benefit of the said D. B., and his wife and children, or any of them; AND SHALL accumulate the residue thereof in the way of compound interest by investing the same, and the resulting income thereof in or upon any such stocks, funds, shares, or securities, as are hereinbefore mentioned (*a*). AND I HEREBY DECLARE that, after the death of my said son D. B., my trustees shall hold the said sum of £——, and the said original and accumulated investments, and the income thereof, or so much thereof respectively as shall not have become vested or been applied under any of the trusts or powers herein contained or by statute implied,

tator's son till bankruptcy; —then part to be applied during his life for the benefit of him, his wife, and children. Residue to be accumulated.

After the death of the son the original and accumulated fund to be in trust for his children.

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or incumbered or attempted to assign, charge, or incumber the income hereinafter directed to be paid to him or some part thereof], or have done or suffered anything whereby the same or some part thereof would by operation of law or otherwise if belonging absolutely to him become vested in or payable to some other person or persons" may be inserted here, but are probably unnecessary, since the trust, though future in terms, has a retrospective operation: *West* v. *Williams*, [1898] 1 Ch. 488; revd., [1899] 1 Ch. 132, where, however, the general principle was admitted.

(*a*) See a somewhat more elaborate trust of this description, *supra*, pp. 532, 533.

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In default of children over.

IN TRUST for such children or child of the said D. B., as being sons or a son, shall attain the age of twenty-one years, or being daughters or a daughter shall attain that age or marry, if more than one, in equal shares; AND if there shall be no child living at my death or born afterwards of the said D. B. who being a son shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, then I BEQUEATH the said sum of £——, and the said original and accumulated investments, or so much thereof as shall not have become vested or been applied as aforesaid, &c. (*a*). AND I HEREBY DECLARE that my trustees [*remainder of additional indemnity and other trustee clauses, ut supra*, pp. 608—610 (*b*)]. IN WITNESS, &c.

CXLVIII.

PRECEDENT CXLVIII.

GIVING POWER TO CARRY ON TESTATOR'S BUSINESS AND OPTIONS OF PURCHASE TO HIS SONS SUCCESSIVELY.

WILL *of a* TRADER *carrying on* BUSINESS ALONE *or in* PARTNERSHIP. POWER *to Trustees to* CONTINUE BUSINESS. OPTION *to Sons in succession to* PURCHASE BUSINESS. NOMINATION *of* SON *to* SUCCEED *to interest in a Partnership.*

I, A. B., of, &c. [*clause revoking prior wills, &c., appointment of executors and trustees, and declaration as to devolution of trustees' powers, supra*, pp. 595, 596. *Specific and general legacies, supra*, p. 622. *General devise and bequest upon trust for sale and conversion, and trusts of proceeds, including a gift of shares to testator's sons, and usual powers and provisions, supra*, p. 597 *et seq.*

(*a*) A power to appoint a life interest to a wife might be added. See *supra*, p. 601, which sufficiently supplies the form of such a power.

(*b*) The nature of the trusts makes it better to leave any vacancy in the trusteeship to be supplied by the trustees themselves.

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GIVING POWER TO CARRY ON TESTATOR'S BUSINESS AND OPTIONS OF PURCHASE TO HIS SONS SUCCESSIVELY.

Power to postpone sale and conversion, and declaration as to intermediate income, supra, p. 604]. AND in particular I authorise and empower my trustees to carry on for such period as they shall think fit any business in which I may be engaged, whether alone or in partnership, at the time of my death, and for that purpose to retain and use therein the capital, or my share of the capital, employed therein at my death, and such additional capital as my trustees shall think fit to advance out of my residuary estate, with full power to act or join in acting in all matters relating to such business as if they were beneficially entitled thereto, or to my share and interest therein, and to delegate all or any of their powers in relation to such business to any person or persons whom they may think proper. AND I declare that my trustees shall be free from responsibility, and entitled to full indemnity out of my estate for or in respect of any loss which may arise in connection with such business. PROVIDED ALWAYS, and I hereby declare that my sons being of age at my death shall have the option in succession according to seniority of purchasing the business of a ——, now carried on by me at ——, at a price to be determined by valuation in such manner as my trustees shall think fit. AND I declare that such option shall be signified by my said sons respectively within such time as my trustees shall think fit to allow for that purpose, and that in the event of the same being exercised the said business shall be purchased as a going concern, and shall include not only the goodwill thereof but my capital therein and the stock-in-trade, machinery, plant, and effects of or belonging thereto, and the real or leasehold premises at or upon which the same shall be carried on or which shall be used in connection therewith, and the benefit of all contracts subsisting in relation thereto, and all book debts and monies due to my estate in respect thereof, except monies so due in respect of profits down to the completion of the purchase. AND I DECLARE that

Power to continue business.

Option to sons in succession to purchase business.

Price to be brought into

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the price at which the said business shall be purchased by my said son so purchasing the same as aforesaid shall be brought into account against the value of his share in my estate, and that in case such price shall exceed such value, my said son shall pay the amount of such excess either on the completion of the purchase or by instalments of such amounts and at such times as my trustees shall approve of to be secured with interest thereon at the rate of five per cent. per annum from the completion of the purchase by the bond or covenant of my said son or otherwise as my trustees shall direct. [PROVIDED ALSO that if such purchase shall be completed before the share of my said son in my estate shall have vested in possession, then in the meantime and until such share shall become vested in possession the entire price shall bear interest at the rate aforesaid, to be paid by my said son to my trustees and to be secured in manner hereinbefore mentioned (*a*).] AND I declare that my said son so purchasing the said business shall indemnify my general estate against all debts and liabilities due or subsisting in respect thereof (*b*): PROVIDED ALWAYS, and I declare that, subject

account in division of estate.

(*a*) This proviso will be proper where there is a previous life interest in the estate. See *Re Dallmeyer*, [1896] 1 Ch. 372; and cp. the form, p. 613, *supra*, n. (*d*).

(*b*) The following clause is adapted to the case where a testator has under articles of partnership a right to nominate a successor to his interest in the partnership:—

"In exercise of the power in this behalf contained in the articles of partnership dated the —— day of ——, 18—, of the firm of ——, in which I am a partner, and of every or any other power enabling me in this behalf, I hereby nominate my son —— to succeed to the share and interest of and in the said partnership business belonging to me at my death, and I bequeath unto my said son such share and interest accordingly, subject to his complying with the provision and direction in the said articles con-

Nomination of successor to partnership share.

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and without prejudice to the powers and provisions hereinbefore contained, my trustees may make such arrangements as they shall think desirable for and in relation to the sale and realisation of any business in which I may be engaged as aforesaid at my death, and may dispose of such business or of my share or interest therein upon such terms as to valuation, settlement of accounts, method of payment, and otherwise as they may think proper. AND I declare that no purchaser from my trustees shall be concerned to see or enquire whether the provisions hereinbefore contained in relation to the aforesaid options of purchase have been complied with, or be in any manner affected by any irregularity or want of compliance with such provisions (*a*). [*Power to apportion blended trust funds and other trustee clauses, supra*, pp. 607—610, *so far as needed.*] IN WITNESS, &c.

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tained as to the admission of a new partner, and indemnifying my estate against all the debts and liabilities of the said firm. AND I declare that my said son shall be charged in the division of my estate with the value of my share and interest in the said business, to be ascertained by valuation in such manner as my trustees shall think fit. AND that if the value of my said share and interest shall exceed the value of the share of my said son in my estate, my said son shall pay the amount of such excess to my trustees either in one sum or by such instalments and with such interest and security as shall be approved by my trustees."

(*a*) As to whether the business could, with the sanction of the Court, be converted into a limited company, see *Re Morrison*, [1901] 1 Ch. 701; *Re New*, *ib.* 2 Ch. 534; *Re Tollemache*, [1903] 1 Ch. 457; on appeal, *ib.* 955.

CXLIX.

PRECEDENT CXLIX.

GIVING LEASEHOLD HOUSE IN TRUST FOR WIFE DURING WIDOWHOOD, AND RESIDUE IN TRUST FOR WIFE AND ISSUE WITHOUT CONVERSION (*a*).

WILL *of* REAL *and* PERSONAL ESTATE. BEQUEST *of* LEASEHOLD HOUSE *upon* TRUST *for the Testator's* WIFE *during* WIDOWHOOD, *with* POWERS *of* SALE *and of* LEASING. GENERAL *devise and bequest of* REAL *and* PERSONAL ESTATE WITHOUT CONVERSION *upon Trust for payment of the income of a* MOIETY *of the Estate to the Testator's* WIFE *during* WIDOWHOOD *and subject to the Widow's Interest for the Testator's* CHILDREN *and the* CHILDREN *of any* CHILD PREDECEASING *the Testator. Power of* MANAGEMENT; EXTENSION *of the powers of the* SETTLED LAND ACT, 1882; *General Power of* INVESTMENT; POWER *to* APPROPRIATE *parts of Estate* SPECIFICALLY *in satisfaction of* SHARES *of* RESIDUE.

I, A. B., of, &c. [*clause revoking prior wills, appointment of executors and trustees, and declaration as to devolution of trustees' powers, ut supra*, pp. 595, 596]. I BEQUEATH to my trustees, their executors and administrators, free of duty, my leasehold messuage situate at ——, UPON TRUST to permit my said (*b*) wife to have the use or receive the rents and profits of the same premises during her widowhood, she paying the rent reserved by the lease under which I hold the same, and performing and observing the covenants by the lessee and conditions therein contained, and indemnifying my other executors

Bequest of leasehold house in trust for wife during widowhood.

(*a*) This Precedent is inserted because testators sometimes object to the ordinary trusts for sale and conversion of the whole estate. But the ordinary form, accompanied, as it is, by a power to postpone conversion, has precisely the same effect, and is much more convenient, as a comparison of this Precedent with Precedent CXLIII., *supra*, p. 595, will show. As to the duties, see notes on pp. 591, 592, 597, 616, *supra*.

(*b*) It is assumed that the wife is an executor and trustee.

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and trustees, and my estate in respect thereof. AND I declare that, after the death or remarriage of my said widow, the said premises shall fall into and form part of my residuary estate. PROVIDED ALWAYS that my trustees at any time during the widowhood of my said wife may sell the said leasehold premises: AND I declare that my trustees shall invest the monies to arise from such sale (after the payment of incidental expenses) in any of the stocks, funds, or securities, hereinafter authorised as investments; and may vary such investments into or for others of any nature so authorised; and shall pay the income of such trust monies and investments to my said wife during her widowhood; and that after her death or remarriage the said trust monies and investments shall fall into and form part of my residuary estate. PROVIDED ALSO, that my trustees may demise the said leasehold premises for any term not exceeding twenty-one years at rack-rent with power (if they shall think fit) to grant or concur in leases of the same premises with the furniture in or upon the same, at an entire rent, and in that case to make or concur in such apportionment of the rent (if and when the same shall require to be apportioned) between the leasehold premises and the furniture as to my trustees in their uncontrolled discretion shall seem fit. [*Bequest of furniture, &c., and pecuniary legacy to wife, ut supra*, pp. 590, 591.] I DEVISE AND BEQUEATH all my real and personal estate (except what I otherwise dispose of by this my will or any codicil hereto) unto and to the use of my trustees, their heirs, executors, and administrators respectively, upon trust that my trustees shall out of my personal estate, or the proceeds of the sale, calling in and conversion thereof, or in case of the insufficiency thereof, by mortgage or sale of my real estate, or a competent part thereof, raise and pay my funeral and testamentary expenses [including the estate duty payable on my death in respect of my residuary real estate and the increment value duty

And after her death or marriage to fall into the residue.

Power of sale during widowhood of wife, —with corresponding trusts of the monies to arise from such sale.

Power of leasing during widowhood of wife, either with or without the furniture.

Devise and bequest of real and personal estate to trustees upon trust to pay funeral and testamentary expenses, debts, and legacies;

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(if any) in respect of the same estate or any part or parts thereof], and debts, including any mortgage debts or charges specifically charged on my real estate, or any part or parts thereof [which I direct to be paid out of my personal estate, as far as the same will extend, in exoneration of the real estate charged therewith] (*a*), and the legacies [other than specific legacies] bequeathed by this my will or any codicil hereto, and the legacy duty on legacies bequeathed free of duty: PROVIDED ALWAYS that no purchaser or mortgagee, under a sale or mortgage of my real estate, or any part thereof, purporting to be made for raising money for such purpose as aforesaid, shall be bound to enquire as to the insufficiency of my personal estate. AND I direct that my trustees shall pay the income of one equal moiety of my said residuary real and personal estate to my said wife during her widowhood, and subject to the interest of my said wife during her widowhood in the income of the said moiety of my said residuary real and personal estate, shall hold my said residuary real and personal estate and the income thereof, IN TRUST for [*testator's children and grandchildren, ut supra*, pp. 612, 613]. PROVIDED ALWAYS that my trustees may raise by sale or mortgage of any part or parts of my said residuary estate (real or personal) or otherwise, any part or parts not exceeding in the whole a moiety of the value (to be determined for that purpose in such manner as my trustees shall in their discretion think fit) of the then expectant share of any child or grandchild of mine in my said residuary real and personal estate under the trusts aforesaid, and may apply the same for his or her advancement or benefit as my trustees shall think fit; But no purchaser or mortgagee shall be concerned to enquire as to the propriety of

—and to pay income of one moiety to wife during widowhood and subject thereto for testator's children and grandchildren, being children of a child predeceasing testator.

Power of raising money by sale or mortage for advancement.

(*a*) A direction to this effect is desirable, in order to preclude questions between the real and personal representatives of the ultimate beneficiaries. And see n. (*b*), on p. 616, *supra*.

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raising any money for the purpose of such advancement, or the amount which ought to be raised, or to see to the application thereof; And so that any sums raised for the purpose aforesaid during the widowhood of my said wife shall, as between her and the other persons beneficially interested in my estate, be considered as raised out of the moiety of my estate the income whereof is not receivable by my said wife. [AND I DECLARE that if there shall be no child or grandchild of mine who shall attain a vested interest in the said trust premises under the trusts hereinbefore declared, then, subject and without prejudice to the trusts and powers hereinbefore declared and contained, my trustees shall stand seised and possessed of my said residuary real and personal estate, and the income thereof, IN TRUST for, &c.] (*a*). PROVIDED ALWAYS, that the whole of the income arising from every or any part of my residuary estate (real or personal) of whatsoever description shall, as well during the first year from my death as at all times afterwards, be applicable as income under the trusts of this my will, no part thereof being in any event liable to be retained as corpus or capital. AND I DIRECT that during the widowhood of my said wife, and also, after her death or remarriage, during the minority of any child or grandchild of mine who shall be interested under the trusts hereinbefore contained, my trustees shall retain possession or receive the rents and profits of my said residuary real and leasehold property, and pay all outgoings and expenses which may be payable, or which they may think fit to pay in respect thereof, and may manage the same premises, and make out of income or capital outlays for the benefit or in respect of my real and personal estate, in the same manner in all respects as if they were absolute (and not merely fiduciary) owners thereof, without

Disposition in default of children or grandchildren entitled under the preceding trusts.

Income of property of every description to be applied as income.

Trusts for management during widowhood of wife and after her death or second marriage during minority of any child or grandchild entitled.

(*a*) This clause should be omitted where the state of the testator's family renders it unnecessary.

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being answerable for any loss occasioned thereby; and for any of the purposes aforesaid, may employ such agent or agents at such salary or remuneration as may be thought fit. AND I HEREBY DECLARE that my trustees shall be the trustees for the purposes of the Settled Land Acts, 1882 to 1890 (*a*), of the settlement created by this my will, and that my trustees may during the widowhood of my said wife with her consent in writing and after her death or remarriage, and during the minority of any child or grandchild of mine who shall be interested under the trusts aforesaid, at the discretion of my trustees, exercise in respect of the entirety of any of my freehold, copyhold, and leasehold hereditaments, all such powers as a tenant for life thereof might exercise under the same Acts, and all monies which shall arise from the exercise of any such power, and which, if the same had been exercised by such tenant for life, would be capital money within the meaning of the said Acts, shall be settled upon such trusts, and with and subject to such powers and provisions as will as nearly as may be correspond with the trusts, powers and provisions applicable under the said Acts to such capital money. PROVIDED ALWAYS AND I DECLARE that all monies forming part of my estate, or otherwise coming to the hands of my trustees under any of the trusts or powers of this my will and requiring investment may be invested by my trustees at their discretion, [*investment clause, supra,* p. 598,] and that any such investments may be varied by my trustees at their discretion, and they may also in like manner vary the investments constituting or representing my residuary personal estate at my death. [PROVIDED ALWAYS, and I declare that notwithstanding anything hereinbefore contained, my trustees may at any time or times with the consent in writing of my said wife during her

Appointment of trustees for purposes of the Settled Land Acts, and declaration as to their powers.

General power of investment.

Power of appropriation and allotment of specific parts of the real and personal estate in satisfaction of shares of residue.

(*a*) See the notes as to these Acts, *supra*, Precedents CXXXVIII. and CXXXIX.

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widowhood, and of the majority in number of such of my children and grandchildren for the time being entitled to, or interested in possession or expectancy in, my residuary estate as aforesaid as shall at the time be of full age, specifically appropriate or allot any part or parts of my estate (real or personal) in the actual condition or state of investment thereof for the time being in or towards satisfaction of the share or shares of any of my said children or grandchildren in my said residuary real or personal estate, and may determine or assume, in such manner and upon such grounds as my trustees shall in their absolute discretion think fit, the value for such appropriation or allotment of every or any part or parts of my said real and personal estate, and every or any such appropriation or allotment shall take effect from such time or times, and be made for or in respect of such sum and in other respects in such manner as my trustees shall think reasonable and proper. AND I DECLARE that any such appropriation or allotment may be made upon the terms of such sum or sums of money as my trustees may think fit, being by or on the part of any of the persons interested under this my will paid for or by way of equality; AND that every such appropriation or allotment shall, subject to such consent or consents as hereinbefore prescribed being obtained thereto, be absolutely binding upon all persons interested under this my will. AND I DECLARE that any property so appropriated or allotted, and the proceeds thereof, if sold, and any sum allotted for equality as aforesaid, and the investments representing the same respectively, shall, until some person or persons shall become absolutely entitled thereto in possession under the trusts of this my will, be and remain subject (according to the nature thereof, and so far as circumstances may require or admit) to the powers and trusts for management and incidental or subsidiary powers and provisions hereinbefore contained, in the same manner as if such appropriation or

Power to provide for payments for equality of allotment.

Declaration as to trusts of allotted properties.

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allotment had not taken place, and subject thereto, such property shall be held upon the like trusts, and with and subject to the like powers and provisions, as the share in or towards satisfaction whereof the same shall have been appropriated or allotted (*a*).] [*Power to apportion blended trust funds and other trustee clauses*, pp. 607—610.] IN WITNESS, &c.

(*a*) The following shorter form is appropriate where the will contains a trust for conversion, with power of postponement and ancillary clauses as usual:—

Power to appropriate specific parts of estate in satisfaction of legacies or shares of residue directed to be converted.

"AND I EMPOWER my trustees at any time to appropriate or allot any part or parts of my estate, whether real or personal, in or towards satisfaction of any legacy or share in my residuary estate hereinbefore bequeathed to or in trust for any son or daughter of mine or any other person at such valuation or estimate of value as my trustees shall think fit, and to execute and make such conveyances, assurances, or transfers of any property so appropriated or allotted as may be necessary or proper [but any property so appropriated or allotted and the proceeds thereof if sold and the investments representing the same shall nevertheless until the same shall become transferable to some person or persons absolutely entitled thereto be and remain subject (according to the nature thereof, and so far as circumstances may require or admit) to the trusts for sale and investment and powers of varying investments and postponing sale and conversion, and of leasing and management until sale, and other incidental or subsidiary powers and provisions hereinbefore contained, in the same manner as if such appropriation or allotment had not taken place, and so that any real estate so appropriated or allotted shall for the purposes of transmission be considered personal estate, and subject thereto such property and the proceeds of the conversion thereof, and the investments of such proceeds, shall be held upon the like trusts, and with and subject

CL.

PRECEDENT CL.

OF MARRIED WOMAN UNDER POWER.

WILL *of a* MARRIED WOMAN *in exercise of a* POWER *of Appointment in her Marriage Settlement* (*a*).

I, A. B., of, &c. [*clause revoking prior wills, &c., ut supra*, p. 590]. WHEREAS by an indenture (*b*) dated the

Recital of settlement creating the power for the wife to appoint in default of issue of the marriage.

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to the like powers and provisions, as the legacy or share in or towards satisfaction whereof the same shall have been appropriated or allotted]."

The power would rarely be exercised in respect of real estate, and as regards personal estate an almost equivalent authority is of necessity given by law to the executors, who, however, are often unwilling to make appropriations without an express authority. See *Re Lepine*, [1892] 1 Ch. 210; *Re Richardson*, [1896] 1 Ch. 512; *Re Nickels*, [1898] 1 Ch. 630; *Re Beverly*, [1901] 1 Ch. 681; and also per Parke, B., 7 M. & W. 313; *The Heirs Hiddingh and De Villiers Denyssen*, 12 App. Cas. 624; *Re Gilbert*, [1898] 1 Q. B. 282; *Re Salaman*, [1907] 2 Ch. 46. The power given by the Land Transfer Act, 1897 (App. XVIII., *infra*), s. 4, seems to be of very limited scope. As to the liability to *ad valorem* stamp duty of transfers pursuant to appropriations, see *Dawson* v. *I. R. Commrs.*, [1905] 2 Ir. Rep. 69.

(*a*) With respect to the exercise of powers by married women, see Sugd. Pow., 8th ed. ch. v. sect. 1; *Hawkesley* v. *Barrow*, L. R. 1 P. & D. 147; *Lechmere* v. *Brotheridge*, 32 Bea. 353; *Taylor* v. *Meads*, 34 L. J. Ch. 203; 4 De G. J. & S. 597; *Bishop* v. *Wall*, 3 Ch. D. 194; *Re Hernando*, 27 Ch. D. 284; *Re Illingworth*, [1909] 2 Ch. 297, where the power was exerciseable during coverture by will or deed, and it was held to be exercised by a will made during coverture, although the testatrix died discovert; and the M. W. P. Act, 1882, App. XII., *infra*, s. 4.

(*b*) The indenture here recited is Precedent CXVII., *supra*. The recital may (if thought fit) be omitted, and in that case the appointment will be made in exercise of the power in the settlement, referring to it by date and parties as above, or referring to it simply as the settlement made on the testatrix's marriage, but the latter form of reference will only be appropriate if there was no

PRECEDENT CL.

OF MARRIED WOMAN UNDER POWER.

—— day of ——, and expressed to be made between C. B. of the first part, myself of the second part, and L. M. and N. O. (thereinafter called the trustees), of the third part (being a settlement made in consideration of the marriage shortly after solemnized between myself and the said C. B.), It was agreed that the trustees should hold the sum of £ —— Two and a half per Cent. Consolidated Stock then belonging to me, and then lately transferred by me into the names of the trustees, in trust for me until the said then intended marriage, and after the solemnization thereof should either permit the said Stock or any part thereof to remain unaltered, or should with such consent, or at such discretion, as therein mentioned, sell the same or any part thereof, and lay out the monies produced by such sale in manner therein mentioned in any of the stocks, funds, shares, or securities, thereby authorized for the investment thereof; and might with such consent or at such discretion as aforesaid, vary the said investments, if and as they should think fit; and should pay the income of the said Stock, and the investments for the time being representing the same during the joint lives of the said C. B. and myself, to me; and after the death of either of us to the survivor of us during his or her life; and after the death of such survivor, should hold the said trust premises and the income thereof, upon trusts thereby declared for the issue or children of our marriage; and it was, by the indenture now in recital, declared that, if there should be no child of the said then intended marriage who being a son should attain the age of twenty-one years, or being a daughter should attain that age or marry, then (without prejudice to the trusts thereinbefore declared) the trustees should hold the said trust premises, and the income thereof, or so much thereof respectively as should

other settlement. Compare the Precedents of appointments by deed, *supra*, pp. 494—505.

PRECEDENT CL.

OF MARRIED WOMAN UNDER POWER.

not have become vested or been applied under any of the trusts or powers therein contained, or by statute implied, in trust for such persons and purposes, and in such manner, as I should, when discovert, by deed, or whether covert or discovert, by will or codicil appoint. AND WHEREAS there has been no issue of my said marriage. NOW IN EXERCISE of the power to me by the hereinbefore recited indenture of settlement given, as aforesaid, and of every other power enabling me in this behalf, I HEREBY APPOINT that, if no child of my said marriage, being a son, shall attain the age of twenty-one years, or being a daughter shall attain that age or marry, the trustees or trustee for the time being of the same indenture, shall after the death of the said C. B., and such default or failure of children as aforesaid, out of the said Stock and the investments for the time being representing the same, and the income thereof, or so much thereof respectively as shall not have become vested or been applied under any of the trusts or powers in the same indenture contained or by statute implied, raise and pay to —— £——, and to —— £——, and as regards each such sum, free from estate duty, it being my intention that all such duty shall be borne and paid out of the residue hereinafter appointed of the said Stock and investments (*a*), AND SHALL pay and transfer the residue of the said Stock and investments, and of the income thereof (including in such residue one or both of the said legacies of £—— and £——, if the same respectively shall fail by lapse or otherwise), unto —— and —— in equal shares. AND as to all other the estate and effects real and personal to which I shall be entitled for my separate use or over which I shall have a general power of appointment or disposition at my death, I devise, bequeath and appoint the same unto the said C. B. for his own use. AND I HEREBY APPOINT the said L. M.

That there has been no issue of the marriage.

Appointment.

General devise and bequest to husband.

Appointment of executors.

(*a*) See note (*b*) on p. 498, *supra*.

and N. O. executors of this my will. IN WITNESS, &c. (*a*).

PRECEDENT CL.

OF MARRIED WOMAN UNDER POWER.

CLI.

CODICIL *appointing a* NEW TRUSTEE *and* EXECUTOR.

PRECEDENT CLI.

CODICIL APPOINTING TRUSTEE AND EXECUTOR.

I, A. B., of, &c., DECLARE this to be a codicil to my will, dated the —— day of —— 19—. WHEREAS E. F., in my said will named, has lately died, NOW I HEREBY APPOINT L. M., of, &c., to be a trustee and executor of my said will, and a guardian of my infant children, in the place of the said E. F.; and I declare that my said will shall accordingly be read and construed as if the name of the said L. M. had been inserted therein throughout, instead of the name of the said E. F. (*b*); and in all other respects I confirm my said will. IN WITNESS, &c.

CLII.

CODICIL *altering the amount of a* LEGACY.

PRECEDENT CLII.

CODICIL ALTERING AMOUNT OF LEGACY.

I, A. B., of, &c., DECLARE this to be a codicil to my will, dated the —— day of ——, 19—. WHEREAS by my

Recital of bequest.

(*a*) This will must be executed in the manner prescribed by 1 Vict. c. 26, s. 9 (see sect. 10 of that Act), and such execution will be sufficient, whatever formalities may have been required by the deed creating the power.

(*b*) See *Re Freeman*, [1910] 1 Ch. 681, where a legacy and share of residue were given to an executor by the will, and the gift of the share of residue was held not to be revoked by a codicil substituting another executor, revoking the legacy, and containing a general declaration of this nature.

PRECEDENT CLII.

CODICIL ALTERING AMOUNT OF LEGACY.

said will I have bequeathed to my son C. B., his executors and administrators, the sum of £——: AND WHEREAS, since the date and execution of my said will, I have at various times advanced and paid to my said son C. B. several sums of money, amounting in the aggregate to the sum of £——, for the purpose of enabling him to establish himself as a ————. Now I HEREBY DECLARE that the said aggregate sum of £—— shall be taken to have been and to be in part payment of the said legacy of £——, and that the said legacy of £—— shall, to the extent of the said sum of £—— so advanced as aforesaid, but not further or otherwise, be considered to have been adeemed. AND in all other respects I confirm my said will. IN WITNESS, &c.

Of a sum having been advanced to the legatee.

Revocation of legacy to the extent of advancement.

CLIII.

PRECEDENT CLIII.

DEVISE IN STRICT SETTLEMENT.

DEVISE *in* STRICT SETTLEMENT (*a*).

I, A. B., of, &c. [*clause revoking prior testamentary instruments and appointment of trustees and declaration as to the devolution of powers of trustees, ut supra*, pp. 595, 596]. I DEVISE all my real estate (*b*) (except what

Devise in strict settlement to the testator's own and his brother's existing and after-born issue.

(*a*) This Precedent is not given as an example of a complete will, but as an example of a devise in strict settlement, with the usual accompanying provisions and powers.

(*b*) This devise would include copyholds, but as the limitations would not take effect conveniently as legal limitations of copyholds, it is proper, when copyhold property of any importance is to be devised in strict settlement, to devise the same to trustees in fee, upon trusts corresponding to the uses of the freeholds, as in the next Precedent, at p. 657, *infra*.

It appears that the above devise would not include leaseholds for years, unless the testator had no freehold or copyhold property. See *Turner* v. *Turner*, 21 L. J. Ch. 843; *Gully* v. *Davis*, L. R. 10 Eq. 562; *Moase* v. *White*, 3 Ch. D. 763; *Butler* v. *Butler*, 28

I otherwise dispose of by this my will) TO THE USE of my son, D. B., during his life without impeachment of waste; and after his death, TO THE USE of each successively, according to seniority, of the sons of the said D. B. born during my life for the life of such son, without impeachment of waste; WITH REMAINDER immediately after the death of each such son (*a*), TO THE USE of his first and other sons successively, according to seniority, in tail male; AND AFTER the failure or determination of the uses and estates hereinbefore limited, TO THE USE of each son of the said D. B. born after my death successively, according to seniority, in tail male; AND IN DEFAULT of such issue, TO THE USE of each successively, according to seniority, of my sons hereafter to be born, during his life without impeachment of waste; WITH REMAINDER, immediately after the death of each such son, TO THE USE of his first and other sons successively, according to seniority in tail male; AND AFTER the failure or determination of the uses and estates hereinbefore limited, TO THE USE of my brother E. B., during his life, without impeachment of waste; AND AFTER his decease, TO THE USE, &c. [*limitation in favour of the sons of E. B. similar to those above in favour of the sons of D. B., and making each son born in the testator's lifetime a tenant for life only*] (*b*); AND IN DE-

Ch. D. 66. For a form of settlement of leaseholds to go with settled freeholds, see the next Precedent, at p. 657, *infra*.

(*a*) See *Honywood* v. *Honywood*, [1903] W. N. 72, 186, where these words were omitted; and also *Surtees* v. *Surtees*, 12 Eq. 400.

(*b*) These limitations are framed so as to in effect make each devisee who may come into existence during the testator's lifetime take for life only, it being assumed that the testator has only one son living at the date of his will, and that an after-born son of the testator will not have a son in the testator's lifetime. Where such limitations are carried on through a long string of devisees, their form may be conveniently shortened, by limiting estates for life to each person in being at the date of the will, with remainder to his

PRECEDENT CLIII.

DEVISE IN STRICT SETTLEMENT.

FAULT of such issue, TO THE USE of my own right heirs. PROVIDED ALWAYS that no person, who shall be *en ventre sa mère* at my death, shall, for the purposes of the limitations hereinbefore contained, be considered as born during my life (*a*). AND I HEREBY DECLARE that every

sons successively in tail male (as in the limitations in the text to the testator's after-born sons), and adding the following proviso after the first limitation :—

Proviso cutting down estates tail to life estates.

"PROVIDED ALWAYS that every person actually born in my lifetime (but not any person *en ventre sa mère* at my death), who under the limitations hereinbefore contained would (but for this present proviso) be entitled by purchase to an estate in tail male in the said premises, shall, in the place in which he would be so entitled as aforesaid, take therein, in lieu of such estate in tail male, an estate for his life only, without impeachment of waste, with remainder, immediately after his death, to the use of his first and other sons successively according to seniority in tail male."

(*a*) If the minority clause formerly inserted in this place is retained, it will be in the form subjoined. Its place is supplied in the present Precedent by the reference *infra*, p. 648, to sect. 42 of the Conv. Act, 1881 (App. IV., *infra*).

Trusts during the minorities of devisees.

"AND I HEREBY DECLARE that if any person who would, if this present declaration had not been inserted, be entitled to the possession, or the receipt of the rents and profits of my said real estate as tenant for life or in tail male by purchase, shall be under the age of twenty-one years, then and so often my trustees shall during such minority receive the rents and profits of and manage the said real estate, and may fell timber for repairs or sale, or otherwise, and may preserve game, and accept surrenders from, and make allowances to and arrangements with, tenants and others, and may do all other things which to them may seem expedient for the due management thereof; and, after deducting the expenses of management, repairs, insurance, and other out-goings, and satisfying any and every annual sum, and the interest of any and every gross sum which may be charged upon the said real estate or any part thereof, shall pay such sum as my trustees shall think proper for or

person hereby made tenant for life of the said premises may, either before or after he shall be entitled to the possession or to the receipt of the rents and profits thereof (but subject to the estates preceding his own estate, and to the powers annexed to such preceding estates, and to the estates which may have been limited in exercise of such powers), by deed or will or codicil, appoint to any woman whom he may marry or have married, for her life, or any less period [by way of jointure], any yearly rentcharge or rentcharges [commencing from or at any time after the death of the appointor and] not exceeding in the whole, for any one woman, the sum of £——, to be charged upon and payable out of all or any of the said premises (*a*); AND I DECLARE that the said power of jointuring may be exercised as often as any person for the time being entitled to exercise the

Power of jointuring.

Power to be exerciseable as often as the donee may marry.

towards the maintenance or education of such minor (either directly, or to his guardians or guardian, to be applied by such guardians or guardian without accounting to my trustees), and shall accumulate the residue of the said rents and profits in the way of compound interest, by investing the same and all the resulting income thereof, in the names of my trustees in any of the public stocks or funds of the United Kingdom, or upon Government or real securities in England, Wales, or Ireland, and may vary the same at their discretion; and shall hold all the said residue of the said rents and profits, and the investments for the time being representing the same, and the annual income thereof, and the accumulations of such income UPON THE TRUSTS, and subject to the powers and provisions applicable to monies arising from sales under the power of sale hereinafter contained, and investments representing the same."

See *infra*, p. 654, n. (*a*), for another form of this trust, giving the accumulations to the minor, on attaining the age of twenty-one or marriage absolutely. If there were no power of sale the trust would take the form given on p. 648, *infra*.

(*a*) Such a rentcharge when limited will give the person entitled thereto the powers conferred by sect. 44 of the Conv. Act, 1881 (App. IV., *infra*). As to the words in square brackets, see *Re de Hoghton*, [1896] 2 Ch. 385.

PRECEDENT CLIII.

DEVISE IN STRICT SETTLEMENT.

same shall marry, but so nevertheless that the premises shall not in any circumstances be liable by virtue of charges created by one and the same person to the payment at one and the same time of any sum or sums exceeding the yearly sum of £——. PROVIDED NEVERTHELESS, that no rentcharge shall become a lien upon any of the said premises, or be payable, unless the person appointing the same shall be or become entitled to the possession or to the receipt of the rents and profits of the said premises, or some issue of such person shall, or would if of full age, become so entitled, or before the time when such person shall become, or when some issue of such person shall become, or, if of full age, would have become so entitled: AND ALSO, that the said premises shall not at any one time be subject to the payment of rentcharges exceeding in the whole the sum of £——, and that such rentcharges shall have priority of payment according to the priority in order of limitation of the respective estates of the several persons exercising the said power. AND I ALSO DECLARE that every person hereby made tenant for life of the said premises may, either before or after he shall be entitled to the possession or to the receipt of the rents and profits thereof (but subject to the estates preceding his own estate therein, and to the powers annexed to such preceding estates and to the estates which may have been limited in exercise of such powers), by deed or will or codicil, charge all or any of the said premises with the payment, for the portion or portions of his child, or all or any of his children (other than an eldest or only son, or any other son for the time being entitled under the limitations hereinbefore contained to the first estate for life or in tail male, either in possession or in remainder expectant on the life estate of the person exercising this power), of any sum or sums not exceeding in the different events hereinafter specified the respective sums following: (that is to say) IF there shall be but one such child (other than as afore-

No jointure to become a lien unless the person limiting the same, or some of his issue, become entitled in possession.

The estates not to be subject to more than a specified annual sum at once for jointures.

Power to charge portions for younger children;

PRECEDENT CLIII.

DEVISE IN STRICT SETTLEMENT.

said), the sum of £——; IF there shall be but two such children (other than as aforesaid), the sum of £——; AND IF there shall be three or more such children (other than as aforesaid), the sum of £——; to be an interest or interests vested in and to be paid to such child, or among such children, or any one or more of them, at such times, if more than one, in such shares, and to be subject to such powers of appointment by the person exercising this power, or any other person or persons, and to such powers of advancement exerciseable at the discretion of the donees or donee or otherwise, and to such other powers and provisions of any description for the benefit of such child or children of any of them, as the person exercising this power shall direct; AND MAY, by deed, or will, or codicil (but subject as aforesaid), charge the premises charged with such portion or portions respectively, with the payment of such clear annual sum or sums not exceeding the interest of the portion or portions after the rate of £—— per cent. per annum, to be raised and applied for the maintenance or education of the child or children for whom such portion or portions shall be intended, until such portion or portions shall become payable, at such times, if more than one in such shares, at or according to the discretion of any trustees or trustee or otherwise, and generally in such manner in every respect as the person exercising this power shall direct: AND MAY, to provide for the raising and payment of such portion or portions and annual sum or sums, by deed, or will, or codicil (but subject as aforesaid), appoint the premises charged therewith to any person or persons for any term or terms of years, with or without impeachment of waste, upon usual trusts for securing payment of the same. PROVIDED NEVERTHELESS, that no portion or annual sum shall become a lien upon all or any part of the said premises, or be payable, unless the person appointing the same shall be or become entitled to the possession or to the receipt of the rents and profits of the said premises, or some issue of

—varying according to the number of children;

—and with annual sums, by way of interest on the portions for maintenance;

—and to limit terms of years for raising the same.

No portion to become a lien unless the person charging the same, or some of his issue, become entitled in possession.

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DEVISE IN STRICT SETTLEMENT.

such person shall, or would, if of full age, become so entitled, or before the time when such person shall become, or some issue of such person shall become, or, if of full age, would have become so entitled: AND ALSO, that the said premises shall not, under the power of charging portions hereinbefore contained, become ultimately subject to the payment of any greater sum in the whole for portions than the sum of £——, and that such portions respectively shall have priority of payment according to the priority in order of limitation of the respective estates of the several persons exercising the said power. AND I HEREBY DECLARE that the powers exercisable by virtue of the Conveyancing and Law of Property Act, 1881, s. 42, during the minority of any person who would, but for that section, be beneficially entitled to the possession of the said premises, shall be exercisable by my trustees: AND that in case any such person, being tenant for life, or in tail male by purchase under this my will, dies while an infant, the accumulated fund arising during his minority from income of the said premises and investments of income thereof shall (subject to the power in the said section contained of applying accumulations as income) be applied in the purchase of freehold hereditaments in England or Wales, for an estate in fee simple to be made subject to the settlement hereby created of the said premises in the manner prescribed by sect. 24 of the Settled Land Act, 1882, with reference to land acquired by purchase as in that Act mentioned, but without prejudice to the interim application thereof as capital money arising under that Act (*a*). AND I HEREBY further DECLARE that my trus-

The estates not to be subject to more than a specified sum at once for portions.

Declaration as to trusteeship of settlement for purposes of Conveyancing and Law of Property Act, 1881;

—and of Settled Land Acts.

(*a*) See and compare the forms, *infra*, pp. 656, 657, and *supra*, p. 573, and the notes thereto; and see also, p. 644, n. (*a*). Of course, if the form there given were inserted, the above declaration as to minorities would be omitted. The powers of leasing and sale and exchange hitherto inserted, in place of the declaration as to the trusteeship of the settlement, are subjoined:—

Trustee clauses.

tees shall be the trustees for purposes of the Settled Land Acts, 1882 to 1890, of the settlement created by this my

PRECEDENT CLIII.

DEVISE IN STRICT SETTLEMENT.

"AND I HEREBY DECLARE that every person hereby made tenant for life of the said premises, when he shall be in the actual possession or entitled to the receipt of the rents and profits thereof, and also my trustees during the minority of any person who, if of full age, would be entitled to the possession or to the receipt of the rents and profits of the said premises, may by deed appoint, by way of lease, &c. [*Remainder of power to lease, ut supra*, p. 563.] AND I HEREBY FURTHER DECLARE that my trustees may during the life of any person hereby made tenant for life, and for the time being entitled to the possession or to the receipt of the rents and profits of the said premises, with his consent in writing, and also during the minority of any person, who, if of full age, would be entitled to the possession or to the receipt of the rents and profits of the said premises, at the discretion of my trustees (but subject to any lease which may have been granted under the power in that behalf hereinbefore contained), dispose of, either by way of sale, or in exchange for other hereditaments in England or Wales, all or any of the said premises, upon such terms and under such conditions as my trustees shall think fit, with power to buy in, or rescind any contract for sale or exchange of all or any of the said premises, and to re-sell or re-exchange the same, without being responsible for any loss occasioned thereby (*a*), and with power, for the purpose of effectuating any such sale or exchange, to revoke all or any of the uses, trusts, or powers hereinbefore limited or to be limited under the powers of jointuring and charging portions hereinbefore contained, of the hereditaments sold or given in exchange, and to appoint the same in any manner they shall think fit. AND I HEREBY DECLARE that my trustees shall, with such consent or at such discretion as aforesaid, lay out the money received upon any sale or for equality of exchange in the purchase of freehold or copyhold hereditaments of inheritance in England or Wales, or in procuring the enfranchisement of copyhold hereditaments purchased or previously settled, and shall settle or cause the same to be settled, to the uses and subject to the powers hereby limited, or to be limited under the powers of jointuring and charging portions hereinbefore contained, as far as the deaths of parties and other intervening circumstances will permit: PROVIDED ALWAYS that my trustees may, with such

Power of leasing.

Power of sale and exchange.

Monies arising under the power of sale and exchange to be laid out in the purchase of lands, to be settled to the uses of the devised estate.

Power for trustees to

(*a*) Sect. 13 of the Trustee Act, 1893 (App. XVI., *infra*), does not seem to extend to exchanges.

PRECEDENT CLIII.

DEVISE IN STRICT SETTLEMENT.

will. [*Power (if desired) for any one or more of the tenants for life to appoint new trustees and other trustee clauses, &c., ut supra,* pp. 565, 566, *mutatis mutandis.*] IN WITNESS, &c.

apply monies received on a sale or exchange in discharge of incumbrances; and, till a purchase, to invest in the funds or upon securities.

consent or at such discretion as are hereinbefore mentioned with respect to a sale or exchange, apply any monies to be received upon any sale or for equality of exchange as aforesaid, or any part thereof, in or towards satisfying any mortgage or other charge or incumbrance which may then affect all or any of the hereditaments which shall then be subject to the uses or trusts of this my will. AND I HEREBY FURTHER DECLARE that, until the money to be received upon any sale or for equality of exchange shall be laid out or disposed of as aforesaid, my trustees may, with such consent or at such discretion as aforesaid, invest the same in their names in any of the public stocks or funds of the United Kingdom, or upon Government or real securities in England or Wales, and may vary the same if and as they shall think fit; AND THAT the annual income from such investments shall be paid and applied in the manner in which the rents and profits of the hereditaments to be purchased therewith as aforesaid, would be payable or applicable in case such purchase and settlement as aforesaid were then actually made."

CLIV.

PRECEDENT CLIV.

OF REAL AND PERSONAL ESTATE CREATING STRICT SETTLEMENT.

WILL *devising* REAL ESTATE, TO USE *that the* TESTATOR'S WIFE *may receive a* RENTCHARGE *during her life, and subject thereto to Testator's* SONS *and* DAUGHTERS *and their issue in Settlement.* POWERS *of* JOINTURING *and charging* PORTIONS. DECLARATION *as to* TRUSTEESHIP *of* SETTLEMENT. DEVISE *of* COPYHOLDS *on Trusts corresponding with Uses of Freeholds.* BEQUEST *of* LEASEHOLDS *on similar Trusts.* BEQUEST *of articles as* HEIRLOOMS. BEQUEST *of* RESIDUARY PERSONAL ESTATE *upon corresponding trusts* (*a*).

I, A. B., of, &c. [*clause revoking prior testamentary instruments and appointing trustees, and declaration as to the devolution of the powers of trustees, ut supra*, pp. 595, 596]. I DEVISE all the messuages, lands, tenements, and hereditaments, and real estate being freehold of inheritance, of or to or over which I shall at my death be seised, or entitled, or have any general power of disposition by will (except what I otherwise dispose of by [this my will or] any codicil hereto), TO THE USE that my wife C. B. and her assigns may, during her life, receive the yearly rentcharge of £——, to be [considered as her separate property without power of anticipation whilst she shall be under coverture, and to be] charged upon all the said premises (*b*), and to be payable by equal half-yearly payments on the —— day of —— and the

General devise of freehold estates.

To use that testator's wife may receive a rentcharge.

(*a*) This Precedent is given as a specimen of a complete will making a strict settlement of the whole real estate and residuary personal estate on the testator's sons and daughters, it being assumed that the provisions for the testator's children, other than the eldest son, are made by way of legacy out of the personal estate. And see n. (*a*), p. 566, *supra*, as to registered land.

(*b*) See p. 522, (*a*), *supra*.

PRECEDENT CLIV.

OF REAL AND PERSONAL ESTATE CREATING STRICT SETTLEMENT.

Subject thereto, to use of testator's sons and daughters and their issue in settlement.

—— day of —— in every year, the first half-yearly payment to be made on such of the said days of payment as shall happen next after my death, if my said wife shall then be living (*a*); AND, subject and charged as hereinbefore is mentioned, I DECLARE that the said premises hereinbefore devised, shall remain and be TO THE USE of my eldest son D. B. during his life without impeachment of waste; And after his death TO THE USE of his first and other sons successively according to seniority in tail male, WITH REMAINDER TO THE USE of his first and other sons successively according to seniority in tail, WITH REMAINDER TO THE USE of his first and other daughters successively according to seniority in tail (*b*), WITH REMAINDER TO THE USE that my second son E. B. and every other son of mine hereinafter to be born, and their respective sons and daughters shall successively take estates similar to and in the same order and with the same priority as those hereinbefore limited to my said son D. B. and his sons and daughters, but so that the elder of such sons of mine and his sons and daughters shall always be preferred to the younger of such sons of mine and his sons and daughters in the same manner in all respects as if the uses hereinbefore limited to or in favour of the said D. B. and his sons and daughters were repeated with the substi-

(*a*) As to the omission of powers of distress and entry, see p. 568, n. (*b*), *supra*.

Alternative limitation to grand-daughters as tenants in common in tail.

(*b*) Or, in lieu of this limitation, to the daughters successively in tail "TO THE USE of his daughters [including any daughter who may have died in my lifetime leaving issue living at my death] as tenants in common in tail, with cross-remainders between such daughters as to their original and accruing shares as tenants in common in tail, but if there shall be but one such daughter, then as to the entirety of the said premises TO THE USE of such one or only daughter in tail." The words in square brackets will hardly be needed in most cases.

PRECEDENT CLIV.

OF REAL AND PERSONAL ESTATE CREATING STRICT SETTLEMENT.

tution of the name of each of my said sons in succession according to seniority for the name of the said D. B., with remainder to the use that all my daughters and their respective sons and daughters shall successively take estates similar to and in the same order and with the same priority as those hereinbefore limited to the use of my sons and their respective sons and daughters, but so that the elder of such daughters of mine and her sons and daughters shall always be preferred to the younger of such daughters of mine and her sons and daughters in the same manner in all respects as if the uses hereinbefore limited to or in favour of my sons and their respective sons and daughters were repeated with the substitution of the name of each of my daughters in succession according to seniority for the names of my sons respectively, WITH REMAINDER TO THE USE of my own right heirs: PROVIDED ALWAYS that if any person to whom I have given an estate in tail male by purchase, and also an estate in tail by purchase in the said premises is born in my lifetime, such respective estates in tail male and in tail shall not take effect; And in lieu of such estate in tail male I devise the said premises TO THE USE of such person during his life without impeachment of waste, WITH REMAINDER TO THE USE of his first and other sons successively according to seniority in tail male; And in lieu of such estate in tail, I devise the said premises TO THE USE of the first and other sons of such person successively according to seniority in tail, WITH REMAINDER TO THE USE of his first and other daughters successively according to seniority in tail. AND ALSO that if any person to whom I have given an estate in tail by purchase only in the said premises is born in my lifetime, such estate in tail shall not take effect; And in lieu thereof I devise the said premises TO THE USE of such person during her life without impeachment of waste, WITH REMAINDER TO THE USE of her first and other sons successively according to seniority in tail, WITH RE-

Remainder to testator's own right heirs.

Proviso cutting down estate tail to life estates.

PRECEDENT CLIV.

OF REAL AND PERSONAL ESTATE CREATING STRICT SETTLEMENT.

MAINDER TO THE USE of her first and other daughters successively according to seniority in tail: PROVIDED ALWAYS that no person who shall be *en ventre sa mère* at my death shall for the purpose of the provision lastly hereinbefore contained be considered as born in my lifetime (*a*). AND I HEREBY DECLARE that every person here-

(*a*) These provisoes, by which the estates of grandchildren actually born in the testator's lifetime are reduced to life estates with remainders over in favour of their issue, will be inappropriate, and should be omitted where there are limitations to tenants in common in tail, as in the alternative form given in note (*b*) at p. 652. Corresponding provisoes adapted to such a case can be framed, but are seldom required in practice.

The minority clause, formerly inserted here, if retained, will be in the form subjoined. Its place is supplied in the present Precedent by the declaration, *infra*, p. 656.

Declaration as to management of estates during minorities.

"AND I HEREBY DECLARE, that if any person who would but for this present proviso be entitled to the possession or the receipt of the rents and profits of the said premises [or of any undivided share thereof], as tenant for life, or as tenant in tail male, or in tail by purchase, shall, being a male, be under the age of twenty-one years, or being a female, be under that age and not under coverture, then and so often my trustees shall, during such minority or minority and discoverture, receive the rents of and manage the same premises [or such undivided share thereof], and may cut [or concur in cutting] timber for repairs or sale or otherwise, and may preserve [or concur in preserving] game, and may accept and make, or concur in accepting and making, surrenders from and allowances to, and arrangements with, tenants and others, and generally may deal [or concur in dealing] with the same premises as if they were the absolute owners thereof [or of such undivided share thereof], and after discharging the whole [or a proportionate part] of the expenses incurred in or about such management, or in the exercise of any of the powers aforesaid, or otherwise in respect of the premises, and of such outgoings as they shall think fit to pay, and keeping down the whole [or a proportionate part] of any annual sum, and of the interest of any gross sum, which may be charged upon the said premises or any part thereof, shall apply such annual sum as my trustees shall think proper in or towards the maintenance or education of such minor (either directly or by payment to his or her guardian or guardians without personally seeing to the application

Power of charging rentcharges.

by made tenant for life of the said premises may either before or after he or she shall be entitled to the possession or receipt of the rents and profits thereof (but subject and without prejudice to the estate preceding his or her own estate, and to the powers annexed to such preceding estates and to the estates which may have been limited in exercise of such powers), appoint to any person whom he or she may marry or have married for the life of such person or any less period, any yearly rentcharge or rentcharges [commencing from or at any time after the death of the appointor], not exceeding in the whole for any one such appointee during the life of the said C. B., the sum of £——, and after her death the sum of £——, to be charged upon and payable out of all or any of the said premises. [*Continue ancillary clauses as on* pp. 645, 646, *supra, and inserting after the words* "not

thereof); and shall accumulate the residue of the said rents and profits in the way of compound interest, by investing the same and the resulting income thereof in the names of my trustees in any of the public stocks or funds or Government securities of the United Kingdom, or upon real securities in England or Wales, and may vary the same at their discretion, and shall hold all the said residue of the said rents and profits, and the investments for the time being representing the same, and the income thereof and the accumulations thereof, UPON THE TRUSTS following; that is to say, IF the person during whose minority the said rents and profits shall have been accumulated as aforesaid shall, being a male, attain the age of twenty-one years, or being a female, attain that age or marry under that age, THEN, in trust for such person and his or her executors, administrators, and assigns, as his or her personal estate; but if such person shall, being a male, die under the age of twenty-one years, or being a female, die under that age and without having been married, THEN upon the trusts, and with and subject to the powers and provisions applicable to monies arising from sales under the power of sale hereinafter contained, and investments representing the same."

If there were no express power of sale the ultimate trust would take the form given on pp. 656, 657, *infra*. The square brackets indicate alterations to be made where there are tenancies in common in tail. Compare the form, *supra*, p. 652, n. (*b*).

PRECEDENT CLIV.

OF REAL AND PERSONAL ESTATE CREATING STRICT SETTLEMENT.

exceeding in the whole" *the words* "together with the rentcharge hereby limited to the said C. B."] AND I ALSO DECLARE that every person hereby made tenant for life of the said premises may either before or after he or she shall be entitled to the possession or to the receipt of the rents and profits thereof (but subject to the estates preceding his or her own estate therein, and to the powers annexed to such preceding estates and to the estates which may have been directed in exercise of such powers), by deed or will or codicil charge all or any of the said premises with the payment for the portion or portions of his or her child or all or any of his or her children (other than an eldest or only son entitled, or a daughter indefeasibly entitled (*a*) under the limitations hereinbefore contained to the first estate for life or in tail male or in tail respectively. [*Continue power to charge portions and ancillary clauses*, pp. 646, 647, 648, *supra, mutatis mutandis*.] AND I HEREBY DECLARE that my trustees shall be trustees of the settlement created by this my will for the purposes of sect. 42 of the Conveyancing and Law of Property Act, 1881, and that if any person who would but for that section be entitled to the possession of the premises hereinbefore devised (*b*), being tenant for life, or in tail male or in tail by purchase, under this my will shall die while an infant, and being a woman without having been married, the accumulated fund arising during the minority or minority and discoverture (as the case may be) of such person from income of the said premises (*c*),

Power of charging portions.

Declaration as to trusteeship of settlement for purposes of Conveyancing and Law of Property Act, 1881;

(*a*) The words: "or a daughter indefeasibly entitled" will be omitted if the granddaughters take as tenants in common.

(*b*) Add, if the alternative form in note (*b*) at p. 652 is adopted, the words: "or any undivided share thereof (as the case may be)."

(*c*) In the case mentioned in the preceding note add: "or of such undivided share thereof."

and from investments of income shall be held upon the trusts applicable to funds representing monies produced by the sale under the power in that behalf conferred by the Settled Land Act, 1882, of the said premises (*a*). AND I HEREBY further DECLARE that my trustees shall be trustees for purposes of the Settled Land Acts, 1882 to 1890, of the settlement created by these presents. I DEVISE all the copyhold messuages, lands, tenements and hereditaments of to or over which I shall at my death be seised or entitled, or have any power of disposition by will (except what I otherwise dispose of by [this my will or] any codicil hereto) TO THE USE of my trustees, their heirs and assigns, according to the custom of the manors whereof the same may be respectively holden, and at and under the accustomed rents and services, UPON SUCH TRUSTS and subject to such powers and provisions as shall correspond with the uses, trusts, powers, and provisions hereinbefore limited and declared concerning my freehold hereditaments hereinbefore devised, as nearly as the different tenure and quality of the premises, and the rules of law and equity will permit, but not so as to increase or multiply charges or powers of charging. I DEVISE AND BEQUEATH all the leasehold messuages, lands, tenements and hereditaments of or to or over which I shall at my death be seised, possessed, or entitled, or have any power of disposition by will (except what I otherwise dispose of by [this my will or] any codicil hereto), UNTO my trustees, their executors, administrators, and assigns, for all such estate, term, and interest as I shall have therein respectively at my death, UPON TRUST that my trustees shall, by and out of the rents and profits thereof,

—and of Settled Land Acts.

Devise of copyholds on trusts corresponding with uses of freeholds.

Bequest of leaseholds on trusts corresponding with use of freeholds.

(*a*) In the same case add: "or of such undivided share thereof."

See the general provision *infra*, as to the construction of referential trusts of this description, and compare the forms, *supra*, pp. 648, 649, and the notes thereto, and also the form in n. (*a*), on p. 654, *supra*. See also notes, pp. 573, 574, *supra*.

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PAY the rents and annual sums reserved by the leases thereof respectively, and perform and observe the covenants by the lessees and conditions in the said leases respectively contained, AND SUBJECT thereto shall hold the same premises, UPON SUCH TRUSTS, &c. [*trusts by reference to the freehold limitations as in the preceding devise of copyholds down to "charging," and proceeding*], and so that such of the same premises as are held by a lease for years shall not (*a*) vest absolutely in any person hereby made tenant in tail male, or in tail, by purchase, of the said freehold premises, unless such person shall attain the age of twenty-one years, but on the death of such person under that age shall devolve in the same manner as the same would have done had they been freeholds of inheritance included in the devise in strict settlement hereinbefore contained.

Bequests of chattels as heirlooms.

I BEQUEATH to my trustees, their executors, administrators, and assigns, all the plate, furniture, linen, china, glass, and articles of household use and ornament, prints, busts, statues, bronzes, marbles, vases, antiquities, articles of virtu or curiosity, books, and manuscripts, which shall be in, or about, or belonging to my mansion-house, called —— House, at the time of my death, upon trust to allow the same articles to devolve as heirlooms, together with the said freehold hereditaments hereinbefore devised, as far as the rules of law and equity will permit, but so nevertheless that the same (*b*) shall not vest [*ut supra*];

Directions to take inventory.

AND I HEREBY DIRECT that as soon as conveniently may be after my death an inventory shall be taken of the said articles, except [*articles of trifling value, ut supra,* p. 612] and such inventory (subject to its being revised as occasion shall require)

(*a*) Add in the case referred to in the preceding page, n. (*a*) the words: "nor shall any undivided share thereof (original or accruing)."

(*b*) In the same case add: "or any share thereof (original or accruing)."

PRECEDENT CLIV.

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shall be signed by every person for the time being entitled to the enjoyment of the same articles under the trusts hereinbefore contained, if and when of full age, and also by my trustees, and the said articles shall at all times be kept adequately insured against loss or damage by fire (so far as the same are capable of being so insured) [and burglary], and properly preserved, by and at the expense of the usufructuary thereof for the time being, and it shall be obligatory on such usufructuary to apply all monies received in respect of any such insurance against fire in or towards replacing or repairing the articles destroyed or injured by fire [and to apply all monies received in respect of any such insurance against burglary in or towards replacing the articles stolen]; BUT the said plate or any part thereof may from time to time be exchanged, or the form and fashion thereof may be altered at the expense of the usufructuary thereof for the time being, providing the intrinsic value thereof be not diminished. PROVIDED ALWAYS, that after the usufructuary for the time being shall have signed the inventory aforesaid, my trustees shall not be bound to see to the insurance or preservation of the said articles, or any of them, and shall not be responsible for any omission or neglect on the part of the usufructuary with respect to the insurance or preservation thereof, nor for loss or damage occasioned by any other act or omission on the part of the usufructuary, but my trustees shall not be precluded from interfering for the protection of the property when and as they shall think fit. I BEQUEATH, &c. [*bequests of pecuniary or other legacies, ut supra*, pp. 591, 596, and 622, *supra*]. I BEQUEATH all

Trustees not to be liable for the insurance or preservation of the property (*a*).

Bequest of residuary personal estate

(*a*) As to the power of the trustees in respect of insurance, see *Re Earl of Egmont's Trusts*, [1908] 1 Ch. 821; and as to the rights of the parties in respect of the insurance money, apart from express provision, *Re Quicke's Trusts*, *ib.* 887.

PRECEDENT CLIV.

OF REAL AND PERSONAL ESTATE CREATING STRICT SETTLEMENT.

upon trusts for conversion, and payment of expenses, debts, and legacies, and subject thereto upon the trusts of monies arising from sales of real estate.

Provisions as to the construction of trusts declared by reference to the statutory trusts of capital money.

my personal estate (except what I otherwise dispose of by this my will, or any codicil hereto) UNTO my trustees, their executors and administrators, UPON TRUST that my trustees shall call in, sell and convert into money such part of my said personal estate as shall not consist of money; AND shall out of the monies to arise from such calling in, sale and conversion, or forming part of my said personal estate, PAY my funeral and testamentary expenses and debts, and the legacies, other than specific, bequeathed by this my will or any codicil thereto; AND shall hold and apply the residue of the same monies upon the trusts and for the purposes applicable to monies produced by the sale under the power in that behalf conferred by the Settled Land Act, 1882, of the said freehold premises hereinbefore devised. PROVIDED ALWAYS and I declare that every trust hereinbefore declared by reference to the trusts applicable to monies produced by the sale under the power in that behalf conferred by the Settled Land Act, 1882, of the said freehold premises (*a*), or, as the case may be, by reference to the trusts applicable to funds representing such monies, shall import primarily a direction that my trustees shall with all convenient speed invest the monies or funds whereof trusts are so declared or the proceeds thereof in the purchase of hereditaments in England for an estate in fee simple to be made subject to the settlement hereby created of the said freehold premises (*b*) in the manner prescribed by sect. 24 of the Settled Land Act, 1882, with reference to land acquired by purchase as in that Act mentioned but without prejudice nevertheless to the interim application thereof as capital money

(*a*) If the alternative form mentioned in note (*b*) at p. 652 is used, add here: "or of any undivided share thereof."

(*b*) In the same case add: "or of such undivided share thereof."

arising under that Act (*a*). [*Power to postpone sale and conversion, ut supra*, p. 594, *so far as applicable to personal estate. Power* (*if desired*) *for any one or more of the tenants for life to appoint new trustees and other trustee clauses, &c., ut supra*, pp. 565, 566, *mutatis mutandis*.] IN WITNESS, &c.

(*a*) As to the importance of this express direction, see *Re Walker*, [1908] 2 Ch. 705.

Releases (*a*).

CLV.

PRECEDENT CLV.

OF JOINTURE.

RELEASE *of part of the lands charged with a* JOINTURE RENTCHARGE, *and* SURRENDER *of the* TERM *for securing the* JOINTURE.

Parties.

THIS INDENTURE, made the —— day of ——, BETWEEN C. B., of, &c. [*jointress*], of the first part, I. K.. of, &c., and L. M., of, &c. [*trustees of jointure term*], of the second part, and D. B., of, &c. [*tenant in fee*], of the third part. WHEREAS by virtue of an indenture (*b*) dated, &c., and expressed to be made between A. B. (since deceased), of the first part, the said C. B.

Recital of creation of the jointure, and jointure term; and title of tenant in fee;

(*a*) As to releases, see Dav. Prec. Conv., 3rd ed. vol. v. part ii. pp. 139—148; and, in addition to the cases there cited, as to the effect of a release with reference to claims included therein, but of which the releasor was not cognisant when the release was given, see *Skilbeck* v. *Hilton*, L. R. 2 Eq. 587; *Brooks* v. *Sutton*, L. R. 5 Eq. 361; *L. & S. W. Railway* v. *Blackmore*, L. R. 4 H. L. 610; *Lawe* v. *Lawe*, Ir. R. 8 Eq. 327; *Ex parte Jarvis*, 10 Ch. D. 179; and *Turner* v. *Turner*, 14 Ch. D. 829; *Re Garnett*, 31 Ch. D. 1; 33 Ch. D. 300; and see also *Worman* v. *Worman*, 43 Ch. D. 296. Releases of registered land will in almost all cases be in the forms hitherto usual.

(*b*) The settlement here recited only differs from that in Precedent CXXXIX., *supra*, by containing an actual limitation of a jointure term, instead of relying upon the statutory power for the jointress to limit such term. The settlor is supposed to be dead, and the eldest son of the marriage to have acquired the fee under a disentailing assurance made during the father's lifetime, and with his consent as protector. This concise form of recital may sometimes be conveniently adopted when brevity is desirable.

(then C. D., spinster), of the second part, E. F. and G. H. of the third part, and the said I. K. and L. M. of the fourth part (being a settlement made in consideration of the marriage shortly afterwards solemnized between the said A. B. and C. B.), and of a disentailing assurance dated, &c., and expressed to be made between the said D. B. of the first part, the said A. B. of the second part, and X. Y. of the third part, and duly enrolled in Chancery, and in the events which have happened, the hereditaments hereinafter released (together with other hereditaments), now stand charged with the payment to the said C. B., during her life, of a yearly rentcharge of £——, by way of jointure, payable quarterly, with the usual powers of distress and entry for recovering the same; and subject thereto, stand limited to the use of the said I. K. and L. M., their executors, administrators, and assigns, for the residue of a term of 200 years, limited to them by the said indenture of settlement upon trusts for securing payment of the same rentcharge; and subject as aforesaid, the same hereditaments are vested in fee simple in the said D. B., who is the eldest son of the said marriage. AND WHEREAS the said C. B. has, in order to enable the said D. B. to effectuate an intended sale of the said hereditaments hereinafter released, agreed to release the same from the said jointure rentcharge, which is intended to remain charged upon the other hereditaments now charged therewith (*a*),

—of agreement to release the jointure and surrender the term.

(*a*) Under 22 & 23 Vict. c. 35, s. 10, a release of part of the lands charged with a rentcharge does not (as was the effect before the passing of this Act) extinguish the rentcharge as to the other lands charged. But the rights of persons interested in the hereditaments remaining unreleased, and not concurring in nor confirming the release, are preserved (see as to this *Booth* v. *Smith*, 14 Q. B. D. 318; *Price* v. *John*, [1905] 1 Ch. 744); sect. 11 contains similar provisions as to the effect of a release from a judgment of part of any hereditaments charged therewith. And see the cases cited in note (*c*), p. 217, *supra*.

PRECEDENT CLV.

OF JOINTURE.

and the said I. K. and L. M. have agreed at her request to make such surrender of the same hereditaments as is hereinafter contained. Now THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the premises, she the said C. B. doth hereby release ALL [*parcels*] from the said yearly rentcharge of £——, created by the hereinbefore recited indenture of settlement, and all powers and remedies for recovering the same. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and in consideration of the premises, they the said I. K. and L. M., by the direction of the said C. B., do, and each of them doth, hereby surrender unto the said D. B., ALL the said hereditaments and premises hereinbefore expressed to be hereby released from the said jointure, TO THE INTENT that the said term of 200 years may merge in the freehold and inheritance of the said premises, and be thereby extinguished. AND EACH of them, the said C. B., I. K., and L. M., so far as relates to her or his own acts and deeds, doth hereby covenant with the said D. B., that they the said covenanting parties respectively have not done or knowingly suffered, or been party or privy to anything whereby the said premises expressed to be hereby released, or any part thereof, are, is or can be impeached (*a*). IN WITNESS, &c.

Witnesseth.

Release of jointure.

Witnesseth secondly.

Surrender of term.

Covenant against incumbrances.

(*a*) According to usual practice, the jointress in such a case will only covenant against incumbrances, and though a covenant on her part might be implied in the usual manner under sect. 7 (1) (F.) of the Conv. Act. 1881, App. IV., *infra*, it has been thought convenient to retain in this Precedent the old form of covenant against incumbrances by both jointress and trustees. It will be observed that the Precedent is worded so as not to imply any covenant for title. See sect. 7 (1) (F.) of the Act.

CLVI.

Release *by* Indorsement *on a settlement, of a* Power *to* jointure *an after-taken wife.*

Precedent CLVI.

Of a power to jointure.

To ALL TO WHOM THESE PRESENTS shall come, the within-named A. B., now of ——, &c., sends greeting: Whereas the marriage between the said A. B. and the within-named M. N. was duly solemnised on the —— day of ——, 18—: And whereas the said M. N., afterwards M. B., died on the —— day of ——, 19—, leaving C. B. the only child of the said marriage: Now these presents witness that, in consideration of the natural love of the said A. B. for the said C. B., and for divers other good considerations, he the said A. B., at the request of the said C. B., doth hereby release, all the hereditaments comprised in the within-written indenture, from the said power of jointuring therein contained, to the intent that the premises may henceforth be discharged from the said power of jointuring, and that the said A. B. may be barred from exercising the same. In witness, &c. (*a*).

Releasing party.

Recital of marriage;

—of death of wife, leaving an only son.

Witnesseth;

—release by donee of the power.

(*a*) A release of a power to jointure or other similar power should, if possible, be indorsed on the instrument creating the power. Otherwise the instrument creating the power should be recited, and, unless the power is created by a will, a memorandum of the release should be indorsed upon the instrument.

CLVII.

PRECEDENT CLVII.

TO TRUSTEES OF MARRIAGE SETTLEMENT.

RELEASE *to the* TRUSTEES *of a* MARRIAGE SETTLEMENT *upon the Division of the Trust Property after the Death of the* SETTLOR *and his* WIFE, *between their* SON *and* DAUGHTER, *the Daughter's Share being transferred to the Trustees of her Marriage Settlement* (*a*).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. [*son*], of the first part, C. D., of, &c. [*husband of daughter*], and E. D., his wife [*daughter*], of the second part, E. F., of, &c., and G. H., of, &c. [*trustees of the daughter's settlement*] (*b*), of the third part, and I. K., of, &c., and L. M., of, &c. [*trustees of the original settlement*] of the fourth part.

Recital of settlement;

WHEREAS by an indenture dated the —— day of ——, 186—, and expressed to be made between N. B., of the first part, O. B. (then O. P., spinster), of the second part, and the said I. K. and L. M. and X. Y. (thereinafter called the trustees) of the third part (being a settlement made in consideration of the marriage shortly afterwards solemnized between the said N. B. and O. B.), it was agreed that the trustees should, after the solemnization of the said intended marriage, either permit a sum of £10,000 Consolidated

(*a*) A release of this description is often made by deed poll, the persons to whom it is given not being made parties, and therefore not being estopped by the recitals.

(*b*) These trustees are made parties for the purpose of acknowledging the receipt of the funds transferred to them, but are not made to join in the operative part of the release, as a release by parties not beneficially entitled is sometimes objected to on their behalf, and is of little advantage to the persons obtaining the release. A limited power of executing releases is, however, given to trustees and executors by sect. 21 of the Trustee Act, 1893, App. XVI., *infra*, and express powers of a similar character are frequently also given; and in practice trustees often do release.

PRECEDENT CLVII.

TO TRUSTEES OF MARRIAGE SETTLEMENT.

£3 per Cent. Annuities, which had been then lately transferred by the said O. B. into the names of the trustees, or any part thereof, to remain unaltered, or should, &c. [*Recite the trusts for investment; for the wife during the joint lives; for the survivor for life; and for issue of the marriage as husband and wife should jointly appoint and in default as survivor should appoint*] (*a*). AND WHEREAS there was issue of the said marriage two children, and no more, namely, the said A. B. and E. D. AND WHEREAS the said X. Y. died on the —— day of ——, 187—, and the said N. B. died on the —— day of ——, 187—. AND WHEREAS in the month of ——, 187—, the said I. K. and L. M., at the request of the said O. B., sold the sum of £2,300, part of the said sum of £10,000 Consolidated £3 per Cent. Annuities (leaving the sum of £7,700 like Annuities, standing in the names of the said surviving trustees), and invested the sum of £2,250 produced by such sale in the purchase of a freehold house and other hereditaments, situate at ——, which, by an indenture dated the —— day of —— and expressed to be made between, &c. [*parties*], were conveyed to the said I. K. and L. M. in fee simple. AND WHEREAS the aforesaid investment was not authorised by the trusts of the hereinbefore recited indenture, but has been approved of and ratified by the said A. B., C. D., and E. D. AND WHEREAS the said O. B., by a deed poll under her hand and seal, dated the —— day of ——, 1887, and indorsed on the hereinbefore recited indenture, in pursuance of the said power given to her by the same indenture, appointed that the sum of £5,000 Consolidated £3 per Cent. Annuities (part of the said sum of £7,700 like Annuities), should thenceforth, subject to the life interest of the said O. B. in the dividends and income thereof, be absolutely vested in and

—issue of marriage;

—of death of one trustee; and of settlor;

—of investment of part of trust funds in purchase of real estate;

—not authorised by the trusts, but sanctioned by parties now beneficially entitled;

—of appointment of a sum of consols to the daughter,

(*a*) The settlement recited is supposed to be of the same form as Precedent CXVII., *supra*.

PRECEDENT CLVII.

TO TRUSTEES OF MARRIAGE SETTLEMENT.

held in trust for the said E. D. (then E. B., spinster), her executors, administrators, and assigns, and that the sum of £2,700 like Annuities (the residue of the said Annuities) and the freehold house and hereditaments so purchased as aforesaid, and all other (if any) the real or personal estate then subject to the trusts of the same indenture, should thenceforth, subject to the life interest of the said O. B. in the income thereof, be absolutely vested in and held in trust for the said A. B., his heirs, executors, administrators, and assigns respectively. AND WHEREAS by an indenture dated the —— day of ——, 1887, and expressed to be made between the said C. D., of the first part, the said E. D. (then E. B.), of the second part, and the said E. F. and G. H., of the third part (being a settlement made in consideration of the marriage shortly afterwards solemnized between the said C. D. and E. D.), the said sum of £5,000 Consolidated £3 per Cent. Annuities, to which the said E. D. was so entitled in reversion as aforesaid, was assigned by her, with the assent of the said C. D., unto the said E. F. and G. H., their executors, administrators, and assigns, upon trust as soon as circumstances would permit to call in and obtain a transfer of the same Annuities, and upon certain further trusts thereby declared for the benefit of the said C. D. and E. D. and their issue and otherwise (*a*). AND WHEREAS in the year 1888 the said sum of £7,700 Consolidated £3 per Cent. Annuities was converted into the sum of £7,700 Two-and-three-quarters per Cent. Consolidated Stock, and is now represented by the like sum of Two-and-a-half per Cent. Consolidated Stock. AND WHEREAS the said O. B. died on the —— day of ——, 190—. AND WHEREAS all succession, estate and other duties payable in respect of

—and the rest of the trust property to the son.

Recital of the daughter's settlement;

—of conversion of consols;

—of the mother's death;

—of payment of duties;

(*a*) The settlement here recited is supposed to be in the form adopted in these Precedents, and not to contain a receipt clause. If the settlement contained such a clause, it should be recited here.

PRECEDENT CLVII.

TO TRUSTEES OF MARRIAGE SETTLEMENT.

—that the income of the trust property has been duly applied;

—of transfer to the trustees of the daughter's settlement of the consols appointed to her;

—transfer of the remaining consols to the son;

—and conveyance to him of the real estate;

—of agreement to release.

Witnesseth.

Release.

the said trust premises have been paid. AND WHEREAS all income arising from the said trust premises during the life of the said O. B. was duly paid to her, and all income arising therefrom since her death has been paid or accounted for to the said A. B., C. D., and E. D. AND WHEREAS the said I. K. and L. M. have, with the privity and approbation of the said C. D. and E. D., transferred the sum of £5,000 Two-and-a-half per Cent. Consolidated Stock (part of the said sum of £7,700 like Stock) into the names of the said E. F. and G. H. (the receipt whereof the said E. F. and G. H. hereby acknowledge), and have transferred the sum of £2,700 like stock (the residue of the same Stock) into the name of the said A. B., and have also, by an indenture bearing even date with, but executed before these presents, and expressed to be made between [*parties*], conveyed the said freehold house and hereditaments to the said A. B. in fee simple. AND WHEREAS before making such transfers and conveyance as aforesaid, it was agreed that the said A. B., C. D., and E. D. should execute such release as is hereinafter contained. Now THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the premises, they the said A. B., C. D., and E. D. (*a*) do, and each of them doth, hereby release the said I. K. and L. M. and each of them, their, and each of their heirs, executors, and administrators, estates and effects, from all accounts, claims, and demands whatsoever, for or in respect of the said stock and hereditaments so transferred and conveyed as aforesaid, and all other the real or

(*a*) See p. 666, *supra*, n. (*b*). The following words may, however, be introduced here, "as and according to their several and respective interests, and the said E. F. and G. H., as the trustees of the said indenture of the —— day of ——, 1887, in exercise of every or any power enabling them in that character but not further or otherwise."

PRECEDENT CLVII. — TO TRUSTEES OF MARRIAGE SETTLEMENT.

personal estate at any time comprised in or subject to the trusts of the said indenture of the —— day of ——, 18—, and the dividends and income of the same, or any part thereof respectively, or for or in respect of any sale, purchase, investment, act, or thing made, done, or omitted by the said I. K., L. M., and X. Y., or any of them, in or about the said trust premises, or any part thereof, or in the execution of the trusts of the same indenture, or for or in respect of anything relating to the premises. IN WITNESS, &c.

CLVIII.

PRECEDENT CLVIII. — BY TENANT FOR LIFE AND REVERSIONER.

JOINT DIRECTION *by a* TENANT FOR LIFE *and* REVERSIONER *to* TRUSTEES TO SELL STOCK *subject to the trusts of a will and* APPLY THE PROCEEDS *in payment of scheduled debts of the reversioner and* RELEASE *accordingly* (*a*).

Parties.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. [*widow and tenant for life*], of the first part, C. B., of, &c. [*reversioner*], of the second part, and D. E., of, &c., and F. G., of, &c. [*trustees*], of the third part.

Recital of title of tenant for life and reversioner;

WHEREAS under the will dated the —— day of ——, 1885, and proved in the principal Registry on the —— day of ——, 1890, of W. B., late of, &c., deceased, the father of the said A. B., she is entitled to receive for her own benefit during her life the income of the resi-

(*a*) This form (which has been found useful in practice, and has received the approval of several eminent conveyancers) may, it is thought, be conveniently adopted under other circumstances, in preference to the more common method, according to which a surrender of the life interest is taken by the reversioner from the tenant for life, who is no party to the release. See, for the form of such a surrender, p. 495, n. (*b*), *supra*.

PRECEDENT CLVIII.

BY TENANT FOR LIFE AND REVERSIONER.

duary estate of the said W. B., or of the monies, stocks, funds, and securities for the time being constituting or representing the same, and by virtue of the same will, and of a deed poll dated the —— day of this instant month and under the hand and seal of the said A. B. (being an appointment in execution of a power in that behalf contained in the said will), the said C. B. is entitled in reversion expectant upon the death of the said A. B. to the sum of £1,000 Two-and-a-half per Cent. Consolidated Stock, part of a sum of £5,000 like Stock standing in the names of the said D. E. and F. G., the present trustees of the said will, and representing with other funds the aforesaid residuary estate. AND WHEREAS the said C. B. is indebted to the several persons whose names are written in the first column of the schedule hereto in the respective sums set opposite to such respective names in the second column of the same schedule, AND WHEREAS the said A. B., at the request of the said C. B., has agreed to relinquish her life interest in the income of the said sum of Stock to which the said C. B. is entitled as aforesaid, and to concur with the said C. B. in directing the same to be sold, and the proceeds of such sale to be applied for payment of the said debts and otherwise as hereinafter provided, and in executing such release as is hereinafter contained. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement in this behalf, and in consideration of the premises, they the said A. B. and C. B., as and according to their respective interests, do and each of them doth hereby direct that the said D. E. and F. G., or the survivor of them, or the executors or administrators of such survivor, shall immediately after the execution of these presents by them, the said A. B. and C. B., sell the said sum of £1,000 Two-and-a-half per Cent. Consolidated Stock, to which the said C. B. is entitled as aforesaid, and shall apply the monies produced by such sale, or so much thereof

—of reversioner being indebted as shown in the schedule;

—of agreement by tenant for life to relinquish her life interest, and to concur in directing sale, and application of the proceeds, and in release.

Witnesseth.

Direction by tenant for life and reversioner;

—to sell stock,

—and apply proceeds;

PRECEDENT CLVIII.

BY TENANT FOR LIFE AND REVERSIONER.

as shall be necessary for such purposes, First, in payment of the costs of and incidental to the preparation and execution of these presents and of the execution of the trusts and purposes of these presents; Secondly, in payment of the legacy duty payable in respect of the stock sold (*a*); and Thirdly, in payment of the said debts specified in the said second column of the said schedule hereto, and of the interest and costs (if any) which may be payable in respect thereof or in relation thereto; AND shall pay the surplus (if any) which, after answering the purposes aforesaid, shall remain of the monies produced as aforesaid unto the said C. B. for his own use. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the aforesaid agreement in this behalf, and in consideration of the premises, they the said A. B. and C. B., as and according to their respective interests, do hereby declare that when and so soon as the said sum of £1,000 Two-and-a-half per Cent. Consolidated Stock shall have been sold and the monies produced by the sale thereof shall have been applied and paid as hereinbefore is directed, the said D. E. and F. G., and each of them, their and each of their heirs, executors, and administrators, estates and effects, shall stand and be absolutely released from the same stock and from the monies produced by such sale, and the stocks, funds, and securities in or upon which the same monies would or might otherwise, or ought to have been, under the trusts of the said will, invested, and the income thereof and every part thereof respectively, and from all actions, accounts, claims, and demands for or in respect of the same stock, monies, and investments, or any of them, or the income of the same, or any part thereof respectively, or for or in respect of any sale, payment, application, act, or thing made, done, or omitted in or

—in payment of costs, duty, and scheduled debts;

—and to pay the surplus (if any) to reversioner.

Witnesseth, secondly.

Declaration that after sale and application before directed the trustees shall stand released.

(*a*) This second direction will be omitted if no legacy duty is payable. As to duties and the stamp, see p. 495, *supra*, n. (*b*).

about the execution of the directions and trusts hereinbefore contained, or for or in respect of anything in anywise relating to the premises (*a*). IN WITNESS, &c.

THE SCHEDULE above referred to.

(*a*) A memorandum of the sale and application of the proceeds should be indorsed on this deed, and signed (if possible) by all parties.

Indemnity Deeds (*a*).

CLIX.

PRECEDENT CLIX.

BOND OF INDEMNITY.

BOND *of* INDEMNITY *to a* PURCHASER *by a* VENDOR *against any* CLAIM *by or through a person, believed, but not positively known, to have died without issue who, or whose issue, if existing, might have a claim to* ONE-FIFTH *of the* LANDS SOLD.

Bond.

KNOW ALL MEN, by these presents, that I, A. B., of, &c. [*vendor*], am bound to C. D., of, &c. [*purchaser*], in the sum of £ —— [*penalty*] (*b*), to be paid to the said C. D., or to his certain attorney, executors, administrators, or assigns, FOR WHICH PAYMENT I bind myself (*c*) by these presents, SEALED with my seal. DATED

(*a*) As to indemnity deeds, see Davidson's Prec. Conv., 3rd ed. vol. v. part ii. pp. 191—196; and as to bonds, see *ibid.*, pp. 267—278. The following Precedent is an instance of a simple form of indemnity against a defect of title to which the vendor's covenants for title do not or might not extend. See, however, *Page* v. *Midland Ry. Co.*, [1894] 1 Ch. 11: *Great Western Ry. Co.* v. *Fisher*, [1905] 1 Ch. 316.

(*b*) The penalty of the bond will be the sum agreed upon as the maximum damages recoverable, if the title prove defective; and in the present case, as the supposed defect of title affects only one-fifth of the property, would probably be one-fifth of the purchase-money.

(*c*) The words, "my heirs, executors, and administrators, and every of them," were formerly inserted, but seem to be unnecessary. See the Conv. Act, 1881, App. IV., *infra*, s. 59. If this bond were entered into by several, it would generally be expressed to bind them, and every two or more of them jointly, and each of them severally.

PRECEDENT CLIX.

BOND OF INDEMNITY.

this —— day of ——, 19—. WHEREAS the hereditaments expressed to be granted by the hereinafter recited indenture were, in the year 1897, purchased by the above-named A. B. from E. F., G. F., H. F., and I. F., who claimed to be entitled thereto, as the four surviving sons and co-heirs in gavelkind of M. F., late of ——, deceased, who died on the —— day of ——, 1892, seised thereof, and intestate. AND WHEREAS the said M. F. had one other son, L. F., of whom nothing has been heard since the month of January, 1882, when he was residing in California, and who is believed to have died shortly after that date without having been married, but of whose death no conclusive evidence has been obtained. AND WHEREAS, by an indenture bearing even date with the above-written bond, and expressed to be made between the said A. B., of the one part, and the above-named C. D., of the other part, in pursuance of a contract for sale therein recited, certain hereditaments situate in the parish of ——, in the county of Kent, and specified in the schedule to the same indenture, have been granted by the said A. B. unto, and to the use of, the said C. D., his heirs and assigns. AND WHEREAS, on the treaty for the said sale, it was agreed that the said A. B. should enter into a bond in the above-mentioned penalty of £——, for indemnifying the said C. D., his heirs and assigns, against any possible claim on the part of or through the said L. F., or his issue. NOW THE CONDITION of the above-written BOND is such, that IF no claim, action, or other proceeding shall before the —— day of ——, 1922 (*a*), be made, commenced, or

Recital of former purchase by present vendor from four co-heirs in gavelkind;

—of supposed death without issue of another co-heir in the ancestor's lifetime;

—of conveyance by vendor to purchaser;

—agreement to give indemnity.

Condition to be void;

—if no adverse claim;

(*a*) Thirty years from the date of the father's death. At this date, notwithstanding any disability, all rights of the son or his issue, if not previously barred under 3 & 4 Will. IV. c. 27, will be barred under sect. 5 of the Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57). From 1st January, 1879, when the latter Act came into operation, absence beyond seas ceased to be a disability: see sect. 4.

PRECEDENT CLIX.
BOND OF INDEMNITY.

taken, at law, or in equity, by the said L. F., or any issue of the said L. F., or any person claiming through or under him or his issue, upon or in respect of the premises comprised in the said indenture of even date herewith, or any part thereof, OR IF the said A. B., his heirs, executors, or administrators, or any of them, shall at all times hereafter keep indemnified the said C. D., his heirs and assigns, and also the said premises, against all claims, actions, and other proceedings, which shall, before the said —— day of ——, 1922, be made, commenced, or taken by the said L. F., or his issue, or any such other person as aforesaid, THEN AND IN EITHER OF THE SAID CASES the above-written bond shall be void, otherwise the same shall remain in full force.

—or if vendor indemnifies purchaser against any such claim.

CLX.

PRECEDENT CLX.
AGAINST ANNUITY AND LEGACY.

INDEMNITY *to a* PURCHASER *of hereditaments charged with an* ANNUITY *and* LEGACY, *by the* INVESTMENT *of part of the purchase-money in the names of the* VENDOR *and* PURCHASER, *and Declaration of Trust accordingly.*

Parties.

THIS INDENTURE, made the —— day of ——, 19—, BETWEEN A., of, &c. [*vendor*], of the one part, and B., of, &c. [*purchaser*], of the other part. WHEREAS M., late of, &c., deceased, was at the time of his death seised in fee simple of divers messuages, lands, tenements, and hereditaments situate at —— in the parish of —— in the county of ——, and known and hereinafter referred to as the X. estate. AND WHEREAS the said M. by his will dated the —— day of ——, 18—, and proved in the —— Registry on the —— day of ——, devised the X. estate by the description of his freehold estate with the appurtenances, situate at ——, in the county of ——, to

Recital of seisin of testator;

—of his will;

PRECEDENT CLX.

AGAINST ANNUITY AND LEGACY.

his nephew, the said A., his heirs and assigns, subject nevertheless to and charged with several annuities and legacies bequeathed by the said will, including an annuity of £100 thereby bequeathed to his the said testator's brother N., and his assigns for his life, and a legacy of £—— thereby bequeathed unto and equally among the children of the said N. living at his death. AND WHEREAS the annuities bequeathed by the said will and charged on the X. estate other than the said annuity to the said N. have determined and been satisfied down to the determination thereof respectively, and the legacies by the said will bequeathed and charged on the X. estate other than the said legacy to the children of the said N. living at his death have been paid, and the duties on the succession of the said A. to the X. estate have also been paid. AND WHEREAS the said N. is living and has children, and his annuity under the said will has been paid down to the —— day of —— last. AND WHEREAS the said A. lately contracted with the said B. for the absolute sale to him of the X. estate and the inheritance thereof in fee simple free from incumbrances, at the price of £——, and, for the purpose of carrying into effect the said contract, a conveyance has been executed of the said estate to the use of the said B., his heirs and assigns, by an indenture bearing even date with these presents. AND WHEREAS, upon the treaty for the purchase of the said hereditaments by the said B., it was arranged between him and the said A., that the sum of £——, part of the purchase-money of £——, should be invested in the joint names of the said A. and B. in the public funds, as a provision by way of indemnity to the said B., his heirs and assigns, and the X. estate against the said annuity to the said N. and legacy to his children living at his death. AND WHEREAS, in pursuance of the said arrangement, the sum of £—— has been invested in the purchase of the sum of £—— Two-and-a-half per Cent. Consolidated Stock in the names of the said A. and B. AND

—of payment of annuities and legacies, except an annuity to a brother and legacies to his children;

—of annuitant being living and having children, and of his annuity having been paid to date;

—of contract for sale and conveyance of the estate;

—of agreement for investment of part of the purchase-money as an indemnity against charges;

—of investment accordingly;

PRECEDENT CLX.

AGAINST ANNUITY AND LEGACY.

WHEREAS the sum of £——, the residue of the said purchase-money, has been paid by the said B. to the said A., as he the said A. doth hereby acknowledge. Now THIS INDENTURE WITNESSETH, that, for further carrying the said arrangement into effect, and in consideration of the premises, IT IS HEREBY agreed that they the said A. and B., their executors, administrators, and assigns, shall stand possessed of the said sum of £—— Two-and-a-half per Cent. Consolidated Stock (hereinafter referred to as the said Stock) and the dividends thereof, UPON TRUST and to the intent that the said Stock and the dividends thereof may constitute a fund to keep indemnified the said B., his heirs and assigns, and the X. estate against the said annuity of £—— by the said will bequeathed to the said N. and his assigns for his life and the duties on the determination thereof, and against the said legacy of £—— by the same will bequeathed to the children of the said N. living at his death, and all interest upon or in respect of such legacy and the duty thereon, and against all actions, expenses, claims, and demands by reason of the non-payment of the said annuity, legacy, and duties or any of them, or any part thereof respectively; AND UPON TRUST that, when and so often as it shall be necessary to apply the said stock, or the proceeds or dividends thereof, for the purpose of indemnifying the said B., his heirs or assigns, or the X. estate against the said annuity, legacy, and duties, or any of them, or the said actions, expenses, claims, and demands as aforesaid, the said A. and B., or the survivor of them, or the executors or administrators of such survivor, shall apply the same accordingly, and do all necessary and proper acts for that purpose; AND subject and without prejudice to the trusts hereinbefore declared, and until the same shall be required for the purposes of the indemnity intended to be hereby given, shall pay to the said A., his executors, administrators, or assigns, the dividends of the said stock for his and

—of payment of residue of the purchase-money.

Witnesseth.

Declaration of trust of sum invested;

—upon trust to be an indemnity fund against annuity and legacy;

—and, when necessary, to be applied for the purpose;

—and subject thereto, that the annual income shall be paid to the vendor;

their own use; AND when and so soon as the said annuity of £—— shall have determined, and all arrears thereof, and the duties on the determination thereof shall have been paid, and the said legacy of £—— shall have been paid to the children of the said N. living at his death, and all interest in respect of such legacy, and the duty thereon, shall also have been paid, then, if there shall be any part of the said stock, or of the dividends thereof, then remaining unapplied or undisposed of for the purposes aforesaid, shall hold the same IN TRUST for the said A., or his executors or administrators, as part of his personal estate. AND THE SAID A. doth hereby covenant with the said B., that he the said A., his heirs, executors, or administrators will at all times keep indemnified the said B., his heirs and assigns, and the X. estate against the said annuity of £——, and the duties on the determination thereof, and against the said legacy of £——, and the duty thereon, and against all actions, expenses, claims and demands by reason of the non-payment of the said annuity, legacy, and duties, or any of them or any part thereof respectively. PROVIDED ALWAYS, and it is hereby declared, that the power of appointing a new trustee or new trustees of these presents in the place of the said A., or of any trustee appointed in his place, shall be exercisable by the said A. or his acting executors or executor, administrators or administrator, and the power of appointing a new trustee or new trustees of these presents in the place of the said B., or of any trustee appointed in his place, shall be exercisable by the said B., his heirs or assigns, owners for the time being of the mansion house of X. IN WITNESS, &c.

PRECEDENT CLX.

AGAINST ANNUITY AND LEGACY.

—and when annuity shall have determined, and legacy been paid, the trust fund to be held in trust for vendor.

Covenant by vendor to keep purchaser indemnified against annuity and legacy (*a*).

Power to each party to appoint a new trustee.

(*a*) It is sometimes convenient to introduce this covenant before the trusts, which may then be to some extent declared by reference to the covenant.

Disclaimers (*a*).

CLXI.

PRECEDENT CLXI.

BY ONE TRUSTEE.

DISCLAIMER *of Trusteeship by one Trustee.*

Recital of will appointing trustee.

Of testator's death.

That trustee has not accepted the trusts.

Witnesseth.

Disclaimer.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A., of, &c., sends greeting. WHEREAS B., late of ——, deceased, duly executed his last will dated ——, and thereby purported to devise and bequeath real and personal estate to the said A., jointly with other persons, upon certain trusts by the said will declared; AND WHEREAS the said B. died on the —— day of ——, without having revoked or altered his said will; AND WHEREAS the said A. has not accepted, or consented to accept, any of the devises or bequests purported to be made to him as aforesaid, and has in no manner interfered or intermeddled with the real or personal estate of the said B. NOW THESE PRESENTS WITNESS, that he the said A. has disclaimed, and doth hereby disclaim, ALL the real and personal estate and effects devised or bequeathed by the said will, AND ALL devises, bequests, legacies, and benefits made or given to him by the said

(*a*) As to disclaimers, see Davidson's Prec. Conv., 3rd ed. vol. v. part ii. p. 661, n. (*a*); and the later cases of *Bence* v. *Gilpin*, L. R. 3 Ex. 76; *Peacock* v. *Eastland*, L. R. 10 Eq. 17; *Wyman* v. *Carter*, L. R. 12 Eq. 309; and *M'Kenna* v. *Eager*, Ir. R. 9 C. L. 79; *Re Gordon*, 6 Ch. D. 531; *Re Birchall*, 40 Ch. D. 436; and see also sect. 52 of the Conv. Act, 1881 (App. IV., *infra*), and sect. 6 of the Conv. Act, 1882 (App. V., *infra*).

will, AND the office of trustee of the said will, AND all powers, rights, and privileges under the same. IN WITNESS, &c.

PRECEDENT CLXI.
BY ONE TRUSTEE.

CLXII.

DISCLAIMER *of Trusteeship, Executorship, and Guardianship by two.*

PRECEDENT CLXII.
BY TWO TRUSTEES, EXECUTORS, AND GUARDIANS.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A., of, &c., and B., of, &c., send greeting. WHEREAS X., late of ——, deceased, by the effect of his will, dated ——, and a codicil thereto, dated ——, appointed his son-in-law, the said A., the said B., and his the said testator's son C., trustees and executors of his said will and codicil, and guardians (together with his the said testator's wife) of his infant children, and devised and bequeathed his real and personal estate not thereby specifically disposed of to the said A., B., and C., upon trusts thereby declared concerning the same; AND WHEREAS the said will and codicil have not yet been proved, and neither the said A. nor the said B. has in anywise administered, or intermeddled with, the real or personal estate of the said testator, or acted or interfered in the execution of the trusts or powers of the said will and codicil, or as guardians of any of the children of the said testator, and the said A. and B. have declined to administer to the estate of the said testator, or to act in the execution of the trusts or powers of the said will and codicil, or as guardians of the said children. NOW THESE PRESENTS WITNESS, that they the said A. and B. have disclaimed, and do and each of them doth hereby disclaim, ALL the real and personal estate, whatsoever and wheresoever, by the said will and codicil devised or bequeathed to them, whether jointly with the said C. or otherwise, in trust as aforesaid; AND all

Recital of effect of will and codicil.

That disclaiming trustees have not intermeddled with the testator's estate; and decline to act as executors.

Witnesseth.

Disclaimer.

PRECEDENT CLXII.

BY TWO TRUSTEES, EXECUTORS, AND GUARDIANS.

trusts, powers, and authorities, by the said will and codicil or either of them expressed to be reposed or vested in the said A. and B., or either of them, whether jointly with the said C. or otherwise: AND the offices of trustees and executors of the said will and codicil, and guardians of the infant children of the said X. PROVIDED ALWAYS, and the said A. doth hereby declare that nothing hereinbefore contained shall operate as a disclaimer on his part of any legacy, estate or interest by the said will bequeathed or given to him, or to which he may or might or could have become entitled thereunder for his own benefit. IN WITNESS, &c. (*a*).

Disclaimer not to affect beneficial interests of one.

(*a*) The trustees should regularly renounce probate of the will in the form required by the Probate Division. As to the effect of such a renunciation not associated with a formal disclaimer of the trusts, see *Re Gordon*, 6 Ch. D. 531. A partial disclaimer, it should be observed, is ineffectual: *Re Lord and Fullerton's Contract*, [1896] 1 Ch. 228.

Appointments of Trustees (*a*).

CLXIII.

Precedent CLXIII.

Of Settlement by Indorsement.

Appointment *by Indorsement on the Settlement, of* New Trustees *of a* Marriage Settlement (*b*).

Parties.

THIS INDENTURE, made, &c., BETWEEN the within-named A. B. and C. B., his wife (formerly the within-named C. D., spinster) [*husband and wife, donees of the power*], of the first part, the within-named G. H. [*retiring trustee*], of the second part, and I. K., of, &c. and L. M., of, &c. [*new trustees*], of the third part. WHEREAS the within-named E. F. is dead, and the said G. H. desires to be discharged from the trusts of the within-written indenture. AND WHEREAS the within-mentioned sum of £ — £3 per Cent. Consolidated Bank Annuities was converted in the year 1888 into the sum of £—— Two-and-three-quarters per Cent. Consolidated Stock, now called Two-and-a-half per Cent. like Stock, and such stock is intended to be forthwith trans-

Recital of death of one trustee, and of another desiring to be discharged; —of conversion of consols and intention to transfer.

(*a*) The appointments of trustees, in this and the five following Precedents, are supposed to be made under instruments containing trustee clauses framed (as in this collection) with reference to the statutory power of appointing new trustees given by the Trustee Act, 1893 (App. XVI., *infra*), s. 10. Appointments of trustees under instruments containing the full power to appoint trustees formerly given (see notes at pp. 473, 474, and 609, *supra*), would purport to be made in exercise of such power, but would not otherwise differ materially from the form of these Precedents.

(*b*) The settlement here referred to is Precedent CXVII., *supra*, p. 467.

PRECEDENT CLXIII.

OF SETTLEMENT BY INDORSEMENT.

ferred into the names of the said I. K. and L. M. Now THIS INDENTURE WITNESSETH, that they, the said A. B. and C. B., in exercise of the power in this behalf vested in them as the persons nominated for the purpose by the within-written indenture, and of every or any other power enabling them (*a*), do hereby appoint the said I. K. and L. M. respectively to be trustees of the within-written indenture in the place of the said E. F. and G. H. respectively. AND IT IS HEREBY DECLARED, that the said I. K. and L. M., their executors, administrators, and assigns, shall hold the said sum of £—— Two-and-a-half per Cent. Consolidated Stock when the same shall have been transferred into their names, UPON THE TRUSTS, and subject to the powers applicable thereto, by virtue of the within-written indenture (*c*). IN WITNESS, &c.

Witnesseth.

Appointment of new trustees.

Declaration of trust (*b*).

(*a*) It is conceived that, whether the instrument of which a trustee is appointed was or was not executed before the passing of the Trustee Act, 1893, the appointment should, unless such instrument contained the full power to appoint trustees formerly usual, be framed as in this Precedent, so as to take effect under the power given by that Act. But the general words referring to other powers (if any) should not be omitted where the instrument was executed before the passing of the Act. See the notes to sect. 10 of the Act (App. XVI., *infra*).

(*b*) A declaration of this kind, though not necessary, is desirable, regard being had to the Trustee Act, 1888, App. XV., *infra*, s. 8, and also convenient, as evidencing the intention to effectuate the appointment by transfer of the trust estate, and at the same time preserving a record of the particulars of which the estate consisted at the time of the appointment. But at the Inland Revenue Office, a deed containing such a declaration is required, upon the authority (which is perhaps insufficient) of *Hadgett* v. *Comms. of Inland Revenue*, 3 Ex. D. 46, to be stamped with an extra 10*s*. As to its operation in creating a specialty debt, see Norton on Deeds, p. 488. The stamp duties in respect of appointments of new trustees are not affected by the Finance (1909-10) Act, 1910; see s. 74 (6).

(*c*) It will, of course, be understood, that if there have been any dealings with the trust property since the date of the settlement, they should be stated in detail or generally, so as to show the funds actually subject to the settlement. See the next Precedent.

CLXIV.

Precedent CLXIV.

Of one trustee of settlement by indorsement.

Appointment *by Indorsement on a* Personalty Settlement (*a*), *of a* New Trustee *in the place of a deceased Trustee, where there have been* Changes *of* Investment.

THIS INDENTURE, made, &c., BETWEEN the within-named A. B. and C. B., his wife, formerly the within-named C. D., spinster [*appointors*], of the first part, L. M., of, &c. [*new trustee*], of the second part, and the within-named E. F., and G. H. [*surviving trustees*], and the said L. M., of the third part. WHEREAS shortly after the execution of the within-written indenture, a marriage was solemnized between the said A. B. and C. B. AND WHEREAS the within-mentioned sum of £—— Two-and-three-quarters per Cent. Consolidated Stock, was on the —— day of —— sold by the said E. F. and G. H., and the within-named I. K., with the consent of the said A. B. and C. B., and £——, the net monies arising from such sale, were on the same day invested in the purchase of £—— India £3 per Cent. Stock, in the names of the said E. F., G. H., and I. K. AND WHEREAS the within-mentioned sums of £—— £— per Cent. Preference

Parties.

Recital of marriage.

Of sale of Bank Annuities and re-investment of monies.

Of sale of railway stock and re-investment of monies.

(*a*) The settlement here referred to is Precedent CXVIII., *supra*, p. 473. If the appointment were made by an independent deed, the parties would be described in the usual way, and the settlement would be recited, from the declaration of trust of the stocks (which would be referred to as having been transferred into the names of the trustees), down to the end of the power to vary investments, adding that by the settlement (which would be referred to as "the indenture now in recital"), trusts were declared of the stocks and the investments representing the same and the income thereof, and setting out the covenant to settle after-acquired property, and the power to appoint new trustees so far as material. The deed would then continue as in the text, except that the word "said" would be substituted for "within-mentioned," and the words "hereinbefore recited" for "within-written."

PRECEDENT CLXIV.

OF ONE TRUSTEE OF SETTLEMENT BY INDORSEMENT.

Stock of the —— Railway Company, and £—— £— per Cent. Debenture Stock of the —— Railway Company, were on the —— day of —— sold by the said E. F., G. H., and I. K., with the consent of the said A. B. and C. B., and the sum of £——, part of the net monies produced thereby, was on the —— day of —— invested by the said E. F., G. H., and I. K., in the purchase in their own names of £—— Stock of the Bank of England, and £——, the residue of the said net monies, was on the —— day of —— invested by the said E. F., G. H., and I. K., upon a mortgage of hereditaments belonging to —— [*mortgagor's name*], situate in the county of ——, made by an indenture dated, &c., and expressed to be made between [*parties*], and bearing interest at the rate of £—— per cent. per annum. AND WHEREAS A. D., the late father of the said C. B., having died intestate, his residuary personal estate became divisible between his widow and his three children as his next of kin, and the two equal ninth shares thereof devolving on the said C. B. became subject to the covenant in the within-written indenture contained for the settlement of her after-acquired property. AND WHEREAS there have been received in respect of such distributive shares of the said C. B., the following sums, namely, on the —— day of ——, the sum of £——, which was invested in the purchase in the names of the said E. F., G. H., and I. K., of £—— Two-and-three-quarters per Cent. (now Two-and-a-half per Cent.) Consolidated Stock, and on the —— day of ——, the sum of £——, which was invested in the purchase in their names of a further sum of £—— like Stock (making altogether the sum of £—— like Stock), and no further sum has yet been received in respect of such distributive shares; AND WHEREAS the said I. K. died in the month of —— last; AND WHEREAS the said A. B. and C. B. desire to appoint the said L. M. to be a trustee of the within-written indenture in the place of the said I. K. AND WHEREAS, in contemplation

Of death of wife's father, and that part of his residuary personal estate became subject to the covenant for settlement of after-acquired property.

Of receipt and investment of part of the residuary personal estate of the wife's father.

Of death of one trustee.

Of desire to appoint new trustee.

PRECEDENT CLXIV.

OF ONE TRUSTEE OF SETTLEMENT BY INDORSEMENT.

of the appointment intended to be hereby made, the said several sums of £—— India £3 per Cent. Stock, £—— Bank of England Stock, and £—— Two-and-a-half per Cent. Consolidated Stock (*a*), have been lately transferred into the names of the said E. F., G. H., and L. M. AND WHEREAS [*recite the transfer of the mortgage debt by an indenture of even date with, but executed before this deed* (*b*)]. NOW THIS INDENTURE WITNESSETH, that they, the said A. B. and C. B., in exercise of the power in this behalf vested in them as the persons nominated for the purpose by the within-written indenture (*c*), and of every or any other power enabling them, do hereby appoint the said L. M. to be a trustee of the within-written indenture in the place of the said I. K. AND IT IS HEREBY DECLARED, that the said E. F., G. H., and L. M., their executors and administrators, shall hold the said sums of £—— India £3 per Cent. Stock, £—— Stock of the Bank of England, and £—— Two-and-a-half per Cent. Consolidated Stock, hereinbefore mentioned to have been transferred to them, and the said mortgage debt of £——, and the securities for the same hereinbefore mentioned to have been assigned to them, UPON THE TRUSTS and subject to the powers applicable thereto respectively, by virtue of the within-written indenture (*d*). IN WITNESS, &c.

That trust funds have been transferred in contemplation of the appointment.

Of transfer of a mortgage.

Witnesseth.

Appointment of new trustee.

Declaration of trust by continuing and new trustees.

(*a*) The aggregate sum purchased with the monies received on account of the distributive shares of the intestate's estate.

(*b*) An example of such a transfer as that here referred to is given in Precedent CLXIX., p. 697, *infra*.

(*c*) See n. (*a*), p. 684, *supra*.

(*d*) See note (*b*) on p. 684, *supra*. The proper course is to transfer the funds and securities after the appointment is made; but they are sometimes transferred previously, as this Precedent contemplates.

CLXV.

PRECEDENT CLXV.

OF WILL.

APPOINTMENT *of a* NEW TRUSTEE *of a* WILL *of Real and Personal Estate* (*a*).

Parties.

THIS INDENTURE, made, &c., BETWEEN E. F., of, &c., G. H., of, &c. (*b*) [*surviving trustees*], of the one part, and L. M., of, &c. [*new trustee*], of the other part.

Recital of the will;

WHEREAS A. B., late of ——, &c., duly made and executed his will dated the —— day of ——, and thereby appointed the said E. F., and G. H. and I. K., executors and trustees thereof, and after giving divers specific legacies and a pecuniary legacy, devised and bequeathed all his real and personal estate (except what he thereby otherwise disposed of) unto the trustees thereinbefore named, their heirs, executors, administrators, and assigns respectively, upon trusts and with powers thereby declared of the same respectively (*c*): and the said testator thereby declared, that [*recite the clause nominating persons to appoint new trustees literally*].

—of testator's death, and probate of his will;

AND WHEREAS the said A. B. died without having revoked or altered his said will, and the same was proved by the said E. F., G. H., and I. K., in the —— Registry, on the —— day of ——, 19—.

—of the death of the wife, and a trustee.

AND WHEREAS C. B., the wife of the said A. B., in his said will named, died on the —— day of ——, and the said I. K. died in the month of —— last.

Witnesseth.

NOW THIS

(*a*) The will here referred to is Precedent CXLIII., p. 595, *supra*. The Precedent will seldom be found suitable to any case except that of an appointment made very shortly after the testator's death. When there have been dealings with the estate, the next Precedent should be used.

(*b*) The testator's wife, to whom the power of appointment was given during her widowhood, is in this Precedent supposed to have died, so that the power of appointment is in the surviving trustees.

(*c*) If the testator died before 31st December, 1881, and the will contained a devise of estates vested in him by way of mortgage, such devise should be recited. But see note (*a*), *supra*.

INDENTURE WITNESSETH, that they the said E. F. and G. H., in exercise of the power for this purpose vested in them as the surviving trustees of the hereinbefore recited will (*a*), and of every or any other power enabling them, do hereby appoint the said L. M. to be a trustee of the said will of the said A. B., in the place of the said I. K. AND THIS INDENTURE ALSO WITNESSETH, that, in pursuance of the appointment hereinbefore made (*b*), they the said E. F. and G. H. AS TRUSTEES do hereby grant unto the said L. M. and his heirs (*c*), ALL the said real estate by the said will devised as aforesaid, and now vested in the said E. F. and G. H., TO HOLD the premises UNTO the said L. M. and his heirs, TO THE USE of the said E. F., G. H., and L. M., their heirs and assigns, UPON THE TRUSTS, and with the powers, applicable thereto by virtue of the said will. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the aforesaid appointment, they the said E. F. and G. H., AS TRUSTEES, do hereby assign unto the said E. F., G. H., and L. M., their executors, administrators, and assigns, ALL the personal estate of the said A. B., by the said will bequeathed as aforesaid and now vested in the said E. F. and G. H. TO HOLD the last-mentioned premises UNTO the said E. F., G. H., and L. M., their executors, administrators, and assigns, UPON THE TRUSTS, and with the powers, applicable thereto, by virtue of the said

Appointment of new trustee.

Witnesseth, secondly. Conveyance.

Habendum.

Witnesseth, thirdly. Assignment of personalty

Witnesseth, fourthly.

(*a*) See n. (*a*), p. 684, *supra*.

(*b*) See sub-sect. (2) (d) of sect. 10 of the Trustee Act, 1893 (App. XVI., *infra*).

(*c*) The conveyance might now be made directly to all the trustees (see sect. 50 of the Conv. Act, 1881 (App. IV., *infra*)), but the grant in the text is effectual for the purpose, and consistent with usage. If the land is registered in the names of the old trustees, the appointment should be accompanied by a transfer in the prescribed form to the new trustees, or (as the case may require) an order under Rule 151; and any existing restrictions or inhibitions should be renewed. Where the trustees are not registered, the proper alterations should be made in the register with respect to any caution,

PRECEDENT CLXV. — OF WILL.

will (*a*). AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the aforesaid appointment, they the said E. F. and G. H., as personal representatives of the said A. B., do hereby grant unto the said L. M., and his heirs, ALL the freehold hereditaments which were vested in the said testator at his death upon mortgage, and are now vested in the said E. F. and G. H., TO HOLD the last-mentioned premises UNTO the said L. M. and his heirs, TO THE USE of the said E. F., G. H., and L. M., their heirs and assigns, subject to the equity of redemption now subsisting therein respectively (*b*). IN WITNESS, &c.

Conveyance of mortgage estates.

Habendum to the use of continuing and new trustees.

restriction, or inhibition entered in favour of the trustees. See pp. 101, 102, 103, *supra*.

(*a*) It will be noticed that the trust estate is vested in the continuing and new trustees by conveyance and assignment, and not by means of a declaration under sect. 12 of the Trustee Act, 1893. A Precedent of an appointment effectuated by means of such a declaration will be found on the next page. If that form (which is preferable when the land is registered) were applied to the present Precedent, it should be framed so as to exclude the testator's mortgage estates, and other property (if any) within sub-sect. (3). As to the stamp, see p. 684, *supra*, n. (*b*).

(*b*) As to copyholds, see *supra*, p. 606, n. (*a*). If the testator died after 31st December, 1881, and the will contained a devise of copyholds legally vested in him as mortgagee, the devise should be recited, and the devisees should covenant to surrender them. See as to transfer of mortgages held by the testator on an appointment of new trustees of a will, Davidson's Prec. Conv., 3rd ed., vol. iv. p. 650, n. (*d*). As pointed out in the latter note, such a transfer of mortgages to the new trustees is generally not desirable, unless the mortgages have been appropriated as part of the trust estate.

CLXVI.

Appointment *of a* New Trustee *of a* Will *of* Real *and* Personal Estate *in the place of a* Trustee *who desires to be discharged.* Declaration *for* Vesting *the* Trust Estate.

Precedent CLXVI.

Of will with declaration vesting the trust estate.

THIS INDENTURE, made, &c., between C. B., of, &c. (widow of A. B., late of, &c., deceased) [*appointor*], of the first part, D. E., of, &c. [*trustee desiring to be discharged*], of the second part, G. H., of, &c. [*new trustee*], of the third part, and the said G. H. and I. K., of, &c. [*continuing trustee*], of the fourth part. Whereas the said A. B. duly made his will, dated, &c., and thereby gave all his real and personal estate unto and to the use of the said D. E. and I. K., their heirs, executors, administrators and assigns, upon trusts and with and subject to powers and provisions, by and in the said will declared and contained concerning the same respectively, and the said testator thereby declared that the power of appointing a new trustee or new trustees thereof should be exerciseable by the said C. B. during her life. And whereas the said testator died on the —— day of ——, 19—, and his said will was proved on the —— day of ——, 19—, in the —— Registry. And whereas the said D. E. is desirous of being discharged from the trusts of the said will, and the said C. B. is desirous of appointing the said G. H. to be a trustee thereof in the place of the said D. E. And whereas the property subject to the trusts of the said will now consists of the freehold and leasehold hereditaments described or referred to in the first schedule hereto, the furniture, chattels, and effects described or referred to in the second schedule hereto, and the mortgage debts, stocks, shares and securities, specified in the third schedule hereto (*a*), and intended

Parties.

Recital of will.

Of death of testator and proof of his will.

Of one trustee's desire to be discharged, and of desire to appoint another in his place.

Of particulars of trust estate.

(*a*) Of course the property might be either particularly or gene-

PRECEDENT CLXVI.

OF WILL WITH DECLARATION VESTING THE TRUST ESTATE.

to be transferred unto the said G. H. and I. K., immediately after the execution of these presents. Now THIS INDENTURE WITNESSETH that the said C. B., in exercise of the power in this behalf vested in her as the person nominated for the purpose by the hereinbefore recited will, and of every or any other power enabling her, doth hereby appoint the said G. H. to be a trustee of the same will in the place of the said D. E. AND THIS INDENTURE ALSO WITNESSETH that in pursuance of the appointment hereinbefore made, the said C. B. doth hereby DECLARE that ALL AND SINGULAR the freehold and leasehold hereditaments described or referred to in the first schedule hereto, AND ALSO, ALL AND SINGULAR, the furniture, chattels, and effects described or referred to in the second schedule hereto, AND ALL OTHER the hereditaments and real and personal estate (if any) now vested in the said D. E. and I. K. upon the trusts of the said will or otherwise subject thereto, and not comprised in the third schedule hereto, and the right to recover and receive every or any debt or thing in action subject to the trusts of the said will and not comprised in the said third schedule hereto shall vest in the said G. H. and I. K. for all such estate and interest as the said D. E. and I. K. had therein immediately before the execution of these presents, or as the same are held for under the same will (*a*). AND it is hereby agreed and declared that the said G. H. and I. K., their executors and administrators, shall hold the said freehold and leasehold

Witnesseth.

Appointment of new trustee.

Witnesseth also.

Declaration by appointor to vest trust estate in continuing and new trustees.

Declaration of trust of the property vested and intended to be transferred.

rally described without reference to schedules. But it is desirable that funds intended to be transferred should be specified either in a schedule or in the body of the deed.

(*a*) See as to this declaration sect. 12 of the Trustee Act, 1893 (App. XVI., *infra*), and the notes thereto. It is conceived that where the property is thus vested, no covenant against incumbrances on the part of the old trustees can be required. Another form of such a declaration will be found *infra*, p. 694, n. Where the land is registered, see n. (*c*), p. 689, *supra*. And for registered parcels, see p. 149, *supra*.

hereditaments, furniture, chattels, and effects and premises vested in the said G. H. and I. K., by means of the declaration in that behalf hereinbefore contained, and also the said mortgage debts, stocks, shares, and securities specified in the said third schedule hereto when the same shall have been transferred as aforesaid, upon the trusts, and with and subject to the powers and provisions subsisting therein or applicable thereto respectively by virtue of the said will (*a*). IN WITNESS, &c.

PRECEDENT CLXVI.

OF WILL WITH DECLARATION VESTING THE TRUST ESTATE.

THE FIRST SCHEDULE above referred to.

THE SECOND SCHEDULE above referred to.

THE THIRD SCHEDULE above referred to.

CLXVII.

APPOINTMENT (*by* SUPPLEMENTAL DEED) *of a* NEW TRUSTEE *of a* TERM OF YEARS *created by a* MARRIAGE SETTLEMENT (*b*).

PRECEDENT CLXVII.

BY SUPPLEMENTAL DEED OF TERM CREATED BY SETTLEMENT.

THIS INDENTURE, made, &c., BETWEEN C. B., of, &c., widow [*appointor*], of the first part, E. F., of, &c., and G. H., of, &c. [*old trustees*], of the second part, and I. K., of, &c. [*new trustee*], of the third part, Supplemental to an indenture dated the —— day of —— and expressed to be made between A. B. now deceased of the first part, the said C. B., then C. D., spinster, of the second part, and the said E. F. and G. H. of the third part (being a settlement made in consideration of the marriage then intended and shortly afterwards solemnized between the said A. B. and C. B. (*c*)),

Parties.

(*a*) See p. 687, *supra*, n. (*d*).

(*b*) The term would probably be one limited for raising portions.

(*c*) See sect. 53 of the Conv. Act, 1881 (App. IV., *infra*), for the

PRECEDENT CLXVII.

BY SUPPLEMENTAL DEED OF TERM CREATED BY SETTLEMENT.

WITNESSETH, that, in exercise of the power in this behalf vested in the said C. B., as the person by the said indenture of settlement nominated for the purpose, and of every other power enabling her, SHE the said C. B. (*a*) doth hereby appoint the said I. K. to be a trustee of the term of —— years by the said indenture of settlement limited, in the place of the said G. H., who desires to be discharged. AND THIS INDENTURE ALSO WITNESSETH, that, in consideration of the premises, and in pursuance of the appointment hereinbefore made, THEY the said E. F. and G. H., AS TRUSTEES, do and each of them doth hereby assign unto the said E. F. and I. K., their executors, administrators, and assigns (*b*),

Witnesseth.

Appointment of new trustee.

Witnesseth also.

statutory effect given to a supplemental deed, and see the next Precedent for another form of such a deed.

(*a*) The power is supposed to be given to the wife by the settlement.

(*b*) Formerly, where it was desired to vest personal property in new trustees jointly with an old trustee in whom it was already vested, two deeds were employed, by the first of which the old trustee transferred the property to a provisional trustee, who by the second deed re-transferred it to the old and new trustees. But after the passing of the Act 22 & 23 Vict. c. 35, two deeds ceased to be requisite, as sect. 21 of that Act enabled a person to assign personal property, including chattels real, directly to himself and another. The transfer might now be effected by means of a declaration by the appointor as in Precedent CLXVI., or in general terms (which would not always be applicable) as follows:—

Vesting declaration.

"AND THIS INDENTURE ALSO WITNESSETH that for effectuating the appointment hereinbefore made, she the said C. B. doth hereby DECLARE that ALL the estate and interest now vested in the said E. F. and G. H. in the hereditaments subject to the trusts of the principal indenture and in every or any chattel so subject, and the right to recover and receive every or any debt or thing in action so subject, shall vest in the said E. F. and I. K. as joint tenants upon the trusts and for the purposes thereof."

ALL the hereditaments and premises by the said indenture of settlement limited to the use of the said E. F. and G. H., their executors, administrators, and assigns, for the said term of —— years, TO HOLD the premises unto the said E. F. and I. K., their executors, administrators, and assigns, for the residue now to come of the said term UPON THE TRUSTS, and with the powers subsisting in the same premises by virtue of the said indenture of settlement. IN WITNESS, &c.

PRECEDENT CLXVII.

BY SUPPLEMENTAL DEED OF TERM CREATED BY SETTLEMENT.

Of premises comprised in the term.

Upon the trusts of the settlement.

CLXVIII.

SUPPLEMENTAL DEED *effectuating the* RETIREMENT *of* ONE *of three* TRUSTEES, *who desires to be discharged* (*a*).

PRECEDENT CLXVIII.

RETIREMENT DEED.

TO ALL TO WHOM THESE PRESENTS SHALL COME, E. F., of, &c. [*retiring trustee*], G. H., of, &c., and I. K., of, &c. [*continuing trustees*], and A. B., of, &c., and C. B., his wife, formerly C. D., spinster [*persons empowered to appoint trustees*], send greeting. WHEREAS these presents are supplemental, and intended to be annexed to an indenture dated the —— day of ——, and expressed to be made between the said A. B., of the first part, the said C. B., then C. D., spinster, of the second part, and the said E. F., G. H., and I. K., of the third part (being a conveyance in consideration of the marriage then intended, and shortly afterwards solemnized, between the said A. B. and C. B. and hereinafter referred to

Parties.

Recital referring to principal deed.

Recital of marriage.

(*a*) See sect. 11 of the Trustee Act, 1893 (App. XVI., *infra*). The deed is connected with the conveyance of freeholds in trust for sale, Precedent CXXXI., *supra*, p. 526. Of course if the deed were neither supplemental nor annexed to, nor indorsed upon, the principal instrument, the latter would be recited sufficiently to show the position of the parties, and the nature and state of the trust property.

PRECEDENT CLXVIII.

RETIREMENT DEED.

as the above-written indenture), and are accordingly expressed and meant to be read as if actually written under the same indenture (*a*). AND WHEREAS no part of the hereditaments comprised in the above-written indenture has as yet been sold. AND WHEREAS the said E. F. is desirous (as he hereby declares) of being discharged from the trusts of the above-written indenture. Now THESE PRESENTS WITNESS that the said G. H. and I. K., and also the said A. B. and C. B., do hereby consent to the discharge of the said E. F. from the trusts of the above-written indenture, and to the vesting in the said G. H. and I. K. alone of the property subject to the trusts of the same indenture. AND THESE PRESENTS ALSO WITNESS that, in pursuance of the statutory direction in this behalf, the said E. F., G. H., and I. K., and also the said A. B. and C. B., do hereby declare that the —— and hereditaments in the above-written indenture described, or expressed to be thereby granted, and all other the hereditaments (if any) now vested in the said E. F., G. H., and I. K., upon the subsisting trusts of the same indenture, shall, upon the execution of these presents, vest in the said G. H. and I. K. alone, as joint tenants, for all such estate and interest as the said E. F., G. H., and I. K. had therein immediately before the execution of these presents and upon the trusts and subject to the

That trustee desires to be discharged.

Witnesseth.

Consent to discharge.

Further witnesseth.

Declaration vesting the trust estate in the continuing trustees.

(*a*) The deed is directed to be read as if written under the settlement, in order that the latter and its contents may be referred to as above-written or above-mentioned. But it is not necessary that the deed should be annexed, and if not intended to be so, the statements as to the intended annexation and its consequences will, of course, be omitted, and in that case the settlement may be referred to subsequently, either as the said indenture of settlement, or as the principal indenture. A deed intended to be annexed to another instrument, should always refer by some precise description to the principal instrument, as otherwise its efficacy will depend wholly upon the continuance of the physical annexation. See preceding Precedent, and Precedent LXXX., p. 356, *supra*, for other forms of supplemental deeds.

provisions applicable thereto by virtue of the above-written indenture (*a*). In witness, &c.

Precedent CLXVIII.

Retirement deed.

CLXIX.

Precedent CLXIX.

Transfer of a Mortgage, on Appointment of New Trustee.

Transfer *of a Mortgage by* Independent Deed, *by one* Continuing *and one* Retiring Trustee *to the* Continuing *and* New Trustees.

Parties.

Recital of mortgage.

This indenture, made the —— day of ——, between A., of, &c. [*continuing trustee*], and B., of, &c. [*retiring trustee*], of the one part, and the said A., C., of, &c., and D., of, &c. [*continuing and new trustees*], of the other part. Whereas, by an indenture dated the —— day of ——, and expressed to be made between [*parties*], in consideration of £—— to the said [*mortgagor*] paid by the said A., B., and E., out of monies belonging to them on a joint account, the said [*mortgagor*] did grant unto the said A., B., and E., their heirs and assigns, certain, &c. [*the parcels being indicated, ut supra*, p. 352]. To hold the same unto and to the use of the said A., B., and E., their heirs and assigns, subject to a proviso for redemption of the same premises on payment by the said [*mortgagor*], his heirs, executors, administrators, or assigns, to the said A., B., and E., their executors, administrators, or assigns, of £——, on the —— day of ——, 19—, with interest thereon in the meantime at the

(*a*) A conveyance or assignment in the ordinary form may be substituted for this declaration. And where there is property incapable of being vested by such a declaration (see sub-sect. (3) of sect. 12 of the Trustee Act, 1893), it will be proper to recite the intention to transfer it immediately after the execution of the deed. See for other forms of a declaration for vesting property under the section referred to, Precedents CLXVI. and CLXVII., *supra*. And see as to registered land, p. 689, *supra*, n. (*c*).

PRECEDENT CLXIX.

TRANSFER OF MORTGAGE, ON APPOINTMENT OF NEW TRUSTEE.

rate of £—— per cent. per annum. AND WHEREAS the said E. is dead. AND WHEREAS the said principal sum of £——, with current interest thereon, remains owing on the security of the hereinbefore recited indenture, but the same now belongs to the said A., C., and D., upon a joint account. NOW THIS INDENTURE WITNESSETH, that in consideration of the premises, they the said A. and B. AS MORTGAGEES do, and each of them doth, hereby assign unto the said A., C., and D., their executors, administrators, and assigns, ALL THAT the said principal sum of £——, so owing to the said A. and B. on the security of the hereinbefore recited indenture as aforesaid, and all interest due and to grow due thereon, AND the benefit of all securities for the same respectively, TO HOLD the premises unto the said A., C., and D., their executors, administrators, and assigns. AND THIS INDENTURE ALSO WITNESSETH, that, for the consideration aforesaid, they the said A. and B. AS MORTGAGEES do, and each of them doth, hereby grant unto the said C. and D., and their heirs, ALL THE hereditaments and premises in the hereinbefore recited indenture comprised, or expressed to be thereby granted, To HOLD the last-mentioned premises UNTO the said C. and D., and their heirs, TO THE USE of the said A., C., and D., their heirs and assigns for ever, SUBJECT to such right or equity of redemption as the same premises are now subject to by virtue of the hereinbefore recited indenture [on payment to the said A., C., and D., their executors, administrators, or assigns, of the said sum of £——, and the interest due and to grow due thereon]. IN WITNESS, &c.

Of death of one mortgagee.

That principal and some interest are owing, and belong in equity to the transferees.

Witnesseth assignment of mortgage debt.

And the benefit of securities.

Habendum to old and new trustees.

Witnesseth.

Conveyance of the mortgaged premises.

Habendum.

To the old and new trustees in fee.

Subject to the subsisting equity of redemption.

Disentailing Deeds (*a*).

CLXX.

DEED *by* TENANT *in* TAIL *in* POSSESSION *to* BAR *the* ENTAIL *of* FREEHOLDS, *the Creation of the Entail not being recited.*

PRECEDENT CLXX.

BY TENANT IN TAIL IN POSSESSION.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*tenant in tail*], of the one part, and B., of, &c. [*grantee to uses*], of the other part, WITNESSETH, that for barring and defeating every estate in tail, either at law or in equity, of the said A. in the hereditaments expressed to be hereby granted, and all remainders, reversions, estates, rights, titles, interests, and powers, to take effect after the determination or in defeasance of every such estate in tail, he the said A. doth hereby grant and dispose of unto the said B. and his heirs, ALL the freehold manors, messuages, lands and hereditaments in the parish of ——,

Parties.

Witnesseth that, to bar his entail, the tenant in tail conveys.

Parcels.

(*a*) As to disentailing assurances, see notes to Dav. Prec. Conv., vol. iii., 3rd ed., pp. 1284—1315, and the authorities and cases there cited, and the more recent cases of *Hall-Dare* v. *Hall-Dare*, 31 Ch. D. 251 (in which a disentailing assurance was rectified on the ground of mistake); *Bankes* v. *Small*, 36 Ch. D. 716 (where specific performance was enforced of a covenant to disentail); *Re Drummond and Davie's Contract*, [1891] 1 Ch. 524 (showing that where the tenant in tail is a woman married since 1882, acknowledgment is no longer necessary); *Lady Cardigan* v. *Curzon-Howe*, [1901] 2 Ch. 479 (as to the far-reaching extent of the bar); and *Re Gaskell and Walter's Contract*, [1906] 2 Ch. 1 (as to the disentail of property belonging to a convict); and see also the notes *infra*, pp. 700, 704, 705, 707.

PRECEDENT CLXX. — BY TENANT IN TAIL IN POSSESSION.

in the county of — -, or any parish or place adjoining thereto, of or to which the said A. is seised or entitled at law and in equity, for any estate in tail, TO HOLD the premises unto the said B. and his heirs, TO THE USE of the said A., his heirs and assigns. IN WITNESS, &c. (*a*).

CLXXI.

PRECEDENT CLXXI. — BY TENANT IN TAIL WITH CONSENT OF PROTECTOR.

DEED *by* TENANT *in* TAIL, *with the Consent of the* PROTECTOR, *to* BAR *the* ENTAIL *of* FREEHOLDS, *and* TRUST FUNDS *arising from sales of* SETTLED LANDS. VARIATIONS *where the* ESTATE *of the* PROTECTOR *is conveyed, and a* JOINT POWER *of* APPOINTMENT *is* LIMITED.

Parties.

THIS INDENTURE, made, &c., BETWEEN C. B. [*tenant in tail*], of the first part, A. B., of, &c. [*protector*], of the second part, and E. F., of, &c. [*grantee to uses*], of the third part. WHEREAS, by an indenture dated the —— day of ——, and expressed to be made between [*parties*], certain manors, messuages, lands, and hereditaments in the parishes of —— and ——, in the county of ——, in the same indenture described or referred to, were assured and limited to certain uses, which have now failed or determined, and, after the failure or determination thereof, to the use of the said A. B. and his assigns during his life, without impeachment of waste, with remainder to the use of the first and other sons of the said A. B. successively, according to their respective seniorities, in tail, with remainders over;

Recital of creation of the entail;

(*a*) This deed should be executed by the grantee, and must be enrolled in the Central Office within six months from its execution. Where the land is registered proper alterations should be made on the register in conformity with sect. 6 of the Land Transfer Act, 1897.

and in the same indenture was contained a power of sale and exchange of the settled hereditaments, with usual provisions for the investment of the monies arising from any sale or exchange in the purchase of hereditaments to be settled to the same uses, and for the interim investment of such monies. AND WHEREAS some of the hereditaments comprised in the hereinbefore recited indenture have been sold or given in exchange under the aforesaid power of sale and exchange [*or* under the powers of the Settled Land Act, 1882 (*a*)], and other hereditaments have been taken in exchange or purchased under the said power of sale and exchange [*or* under the powers of the Settled Land Act, 1882], and have been limited to the uses of the said indenture, by reference thereto [and certain lands have been allotted by an award under an Inclosure Act, in respect of lands comprised in the same indenture, or settled by reference thereto]. AND WHEREAS such of the monies produced by sale or exchange, as have not been invested in the purchase of hereditaments, are now represented by the sum of £—— Two-and-a-half per Cent. Consolidated Stock, standing in the names of —— and ——, the present trustees of the hereinbefore recited indenture. AND WHEREAS the said C. B. is the first son of the said A. B., and attained his age of twenty-one years on the —— day of ——, 19—. NOW THIS INDENTURE WITNESSETH, that (*b*) he the said C. B., with the consent of the said A. B., as protector of the settlement (testified by his executing these presents), doth hereby grant and dispose of unto the said E. F. and his heirs, ALL the manors, messuages, lands, and hereditaments comprised in or assured by the hereinbefore recited

—of changes in the estates;

—and investment of sale monies;

—of the birth and majority of the tenant in tail.

Witnesseth.

Conveyance.

Freehold parcels.

(*a*) See *supra*, p. 160, n. (*b*).

(*b*) If the protector conveys his estate, as is usual when a re-settlement is anticipated, introduce here the words:—

"he the said A. B., so far as relates to his life estate, doth hereby grant and"

PRECEDENT CLXXI.

BY TENANT IN TAIL WITH CONSENT OF PROTECTOR.

indenture, or which by virtue of any conveyance to the uses of the same indenture, or any such exchange as aforesaid [or under the said award], or otherwise howsoever, have become subject, either at law or in equity, to the subsisting uses of the same indenture, EXCEPT such of the said hereditaments comprised in the same indenture as have been sold or given in exchange, TO

Habendum.

HOLD the premises (subject and without prejudice to the estate for life of the said A. B., and to such of the powers and privileges thereto annexed, or exerciseable during the continuance thereof, as are now subsisting or capable of being exercised (*a*)), UNTO the said E. F. and his heirs, TO (*b*) THE USE of the said

Witnesseth.

C. B., his heirs and assigns. AND THIS INDENTURE ALSO

(*a*) In the case mentioned in the last preceding note these words will be omitted, but it is sometimes necessary to substitute the following words:—

"Subject and without prejudice to the uses and estates preceding the estate by the hereinbefore recited indenture limited to the first son of the said A. B. other than the estate for life of the said A. B., and to the powers annexed to such preceding estates, or exerciseable during the continuance thereof respectively."

(*b*) In the same case instead of the use in favour of C. B., his heirs and assigns, substitute the following words:—

"SUCH USES and subject to such powers and provisions as the said A. B. and C. B. shall by deed jointly appoint, and in default of and until and subject to such appointment, [TO SUCH USES and subject to such powers and provisions as the said C. B., if he shall survive the said A. B., shall, after the death of the said A. B., by deed or will or codicil appoint, and in default of and until and subject to such appointment.] To THE USES upon the trusts and subject to the powers and provisions which, by virtue of the hereinbefore recited indenture, were sub-

PRECEDENT CLXXI.

BY TENANT IN TAIL WITH CONSENT OF PROTECTOR.

WITNESSETH, that (*a*) he the said C. B., with the consent of the said A. B. as protector of the settlement (testified as aforesaid), DOTH HEREBY assign and dispose of, UNTO the said E. F., and his heirs, ALL THAT the said sum of £—— Two-and-a-half per Cent. Consolidated Stock and all other, if any, the monies, stocks, funds, and securities, which, or the monies to arise from the sale or conversion whereof, are now applicable to the purchase of lands to be settled to the subsisting uses of the hereinbefore recited indenture, To HOLD the last-mentioned premises (subject and without prejudice to such estate for life, powers, and privileges as aforesaid (*b*)), UNTO the said E. F. and his heirs (*c*), IN TRUST for the said C. B.,

Assignment of funds.

Habendum.

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sisting or capable of taking effect therein immediately before the execution of these presents so as to restore and confirm the same uses, trusts, powers and provisions."

(*a*) In the same case insert here:—

"the said A. B. so far as relates to his life estate doth hereby assign and"

(*b*) See note (*a*) on p. 702, *supra*.

(*c*) In the alternative case above mentioned, substitute for the remaining words:—

"UPON SUCH TRUSTS and subject to such powers and provisions as the said A. B. and C. B. shall by deed jointly appoint and in default of and until and subject to such appointment, [UPON SUCH TRUSTS and subject to such powers and provisions as the said C. B., if he shall survive the said A. B., shall, after the death of the said A. B., by deed or will or codicil appoint, and in default of and until and subject to such appointment,] UPON THE TRUSTS and subject to the powers and provisions which, by virtue of the hereinbefore recited indenture, were subsisting or capable of taking effect therein immediately

PRECEDENT CLXXI.

BY TENANT IN TAIL WITH CONSENT OF PROTECTOR.

his executors, administrators, and assigns, as personal estate (*a*). IN WITNESS, &c.

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before the execution of these presents so as to restore and confirm the same trusts, powers, and provisions."

(*a*) See n. (*a*), p. 700, *supra*. It was held in *Re Kingston's Estate*, 5 L. R. Ir. 169, that a grant of hereditaments to which the grantor was entitled in tail, would disentail funds representing the proceeds of sale of entailed land under the Landed Estates Court (Ireland) Act (21 & 22 Vict. c. 72), regard being had to sect. 64 of that Act corresponding with the usual trust of proceeds of sale in a real settlement. But this decision seems questionable, and was in fact rendered not material by the decision on another point; and see *Mills* v. *Fox*, 37 Ch. D. 153. In *Re Harvey*, [1901] 2 Ch. 290, it was decided that personal estate, of which the income was directed to be paid to A. for life, and which after his death was directed to be invested in the purchase of land to be settled to the uses of a strict settlement, could be disentailed in the lifetime of A. Precedent CXL., *supra*, is a form of a re-settlement by tenant for life and remainderman under a joint power created by a disentailing assurance by which the protector has conveyed his life estate, and the notes to that Precedent should be consulted.

This deed should be executed by the grantee, and must be enrolled in the Central Office within six calendar months from its execution by the tenant in tail. It would seem that it will be effectual though the tenant in tail should die before its execution by the protector, and though the enrolment be not made until after the death of the tenant in tail: *Whitmore-Searle* v. *Whitmore-Searle*, [1907] 2 Ch. 332.

CLXXII.

Protector's Consent *to the* Barring *of an* Estate Tail (*a*).

Precedent CLXXII.

Protector's consent.

To all to whom these presents shall come, A. B., of, &c. [*protector*], sends greeting. Whereas under and by virtue of the last will of C. B., late of ——, divers manors, messuages, farms, lands, and other hereditaments stand limited to the use of the said A. B., and his assigns for his life, without impeachment of waste, with remainder to the use of the first son of the said A. B., in tail with remainders over. And whereas D. B. is the first son of the said A. B., and has attained the age of twenty-one years. Now these presents witness, that the said A. B., as protector of the settlement, doth hereby consent to every or any disposition which the said D. B. shall make of the said manors,

Recital of state of the title.

That first son has attained twenty-one.

Witnesseth protector's consent to disposition by tenant in tail.

(*a*) As to such deeds, see Sugd. V. & P., 14th ed., p. 468; Dart, V. & P., 7th ed., p. 708 *et seq.* See, too, *Re Pares*, 2 Ch. D. 61 (as to giving consent to a partial bar of the entail for the purpose of creating a charge); *Tufnell* v. *Borrell*, L. R. 20 Eq. 194 (as to the protectorship of undivided shares); *Re Dudson's Contract*, 8 Ch. D. 628 (confirming the accepted opinion that the words "owner of the prior estate" in sect. 22 refer to the beneficial ownership); *Re Hughes and L. & N. W. Railway Act*, 1865, [1906] 2 Ch. 642 (which is to the same effect, and in which also it was held that an heir beneficially interested did not take under the settlement, and was moreover prevented from being protector by sect. 27); *Clarke* v. *Chamberlin*, 16 Ch. 176 (where all the persons appointed protectors had died, and the tenant for life had consequently become protector); and *Cohen* v. *Bayley-Worthington*, [1908] A. C. 97 (as to the survivorship of the office).

This deed should be executed by the grantee and must be executed on or before the day of the execution, and enrolled at or before the enrolment, of the disentailing assurance; see 3 & 4 Will. IV. c. 74, ss. 42, 46.

PRECEDENT CLXXII. — PROTECTOR'S CONSENT.

messuages, farms, lands, and other hereditaments devised by, or subject at law or in equity to, the subsisting uses of the said will, or of any of them, or of any part thereof. IN WITNESS, &c.

CLXXIII.

PRECEDENT CLXXIII. — TO BAR EQUITABLE ENTAIL OF COPYHOLDS.

DEED *to* BAR *an* EQUITABLE ESTATE TAIL *in* COPYHOLDS.

THIS INDENTURE, made, &c., BETWEEN A. B., of, &c. [*husband of tenant in tail*], and C. B. [*tenant in tail*], his wife (*a*), of the first part, E. F., of, &c. [*protector*], of the second part, and G. H., of, &c. [*grantee*], of the third part. WHEREAS divers hereditaments, held by copy of Court Roll of the Manor of ——, in the county of ——, are vested, as to the legal estate therein, in trustees, and stand settled in trust for the said E. F., for his life, with remainder in the events which have happened, in trust for all the daughters of the said E. F., as tenants in common in tail, in equal shares, with cross remainders between the said daughters in tail, with remainders over. AND WHEREAS the said C. B. is a daughter of the said E. F., and has lately attained the age of twenty-one years. NOW THIS INDENTURE WITNESSETH, that for the purpose of barring the equitable estate tail of the said C. B. in the said copyhold premises, HE the said A. B. doth hereby grant, and she the said C. B., with the concurrence of the said A. B., and the consent of the said E. F. as protector of the settlement (testified by their respectively executing these presents), doth hereby grant and dispose of unto the said G. H. and his heirs, ALL AND

Parties.

Recital of copyholds being settled in trust for daughters of tenant for life.

That tenant in tail has attained twenty-one.

Witnesseth.

Grant and disposition.

(*a*) Assumed not to be entitled for her separate use under the Married Women's Property Act, 1882 (App. XII., *infra*). If she were so entitled, her husband's concurrence would be unnecessary. See *supra*, p. 699, n. (*a*).

PRECEDENT CLXXIII.

TO BAR EQUITABLE ENTAIL OF COPYHOLDS.

EVERY the share and shares of her the said C. B., of and in ALL THAT [*parcels*]: AND ALL other (if any) the copyhold or customary lands, tenements, and hereditaments, or share or shares of lands, tenements, and hereditaments, held of the said manor, to which the said C. B. is entitled, for an equitable estate tail, in remainder, expectant on the decease of the said E. F., TO HOLD the premises unto the said G. H. and his heirs, subject to the subsisting estates and interests, preceding the estate tail of her the said C. B., in the said premises, and to the powers annexed to such estates and interests, TO THE USE of the said C. B., her heirs and assigns for ever. IN WITNESS, &c. (*a*).

Parcels.

Habendum.

Subject to preceding estates.

To use of tenant in tail in fee.

(*a*) This deed must be acknowledged by the married woman, and must be entered on the Court Rolls of the manor (see 3 & 4 Will. IV. c. 74, ss. 40, 50, 53), and should be executed by the grantee. And in analogy to the case of freeholds, the entry must be made within six calendar months after the execution of the deed: *Honywood* v. *Foster*, 30 Beav. 1; *Gibbons* v. *Snape*, 1 De G. J. & S. 621; *Green* v. *Paterson*, 32 Ch. D. 95; *Carter* v. *Carter*, [1896] 1 Ch. 62. See also Sugd. V. & P., 14th ed., p. 470; Dart, V. & P., 7th ed., p. 709.

Enlargement Deeds (*a*).

CLXXIV.

PRECEDENT CLXXIV.

BY PERSON ABSOLUTELY ENTITLED FREE FROM INCUMBRANCES.

DEED *of* ENLARGEMENT *of a* LONG TERM *by a* PERSON ABSOLUTELY ENTITLED *free from incumbrances.*

Party. Recital of title to term.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of, &c., sends greeting. WHEREAS the said A. B. is beneficially entitled, in right of the term hereinafter mentioned, to possession of the hereditaments specified in the schedule hereto, for the residue of a term of —— years created therein by an indenture dated the —— day of ——, and expressed to be made between [*parties*], without any trust or right of redemption affecting the said term in favour of any person entitled in reversion expectant thereon, and without any rent now subsisting incident to the reversion, and not liable to be determined by re-entry for condition broken. NOW IN EXERCISE of the power in this behalf given by the Conveyancing and Law of Property Act, 1881, the said A. B.

Declaration. That term shall be enlarged into the fee simple.

DOTH HEREBY DECLARE that from and after the execution of these presents, the aforesaid term or the residue thereof, as regards the said hereditaments specified in the said schedule hereto, and all other hereditaments (if any) to or in which the said A. B. is beneficially entitled or interested in right of the said term, shall be and the same is

To the intent that the fee

hereby enlarged into the fee simple, TO THE INTENT that the fee simple of the said premises, including all mines

(*a*) See the Conv. Act, 1881 (App. IV., *infra*), s. 65, and the Conv. Act, 1882 (App. V., *infra*), s. 11.

and minerals within and under the same, may be vested in the said A. B. In witness, &c.

THE SCHEDULE above referred to.

PRECEDENT CLXXIV.

BY PERSON ABSOLUTELY ENTITLED, &c.

simple may vest in the declarant (*a*).

CLXXV.

Deed *of* Enlargement *of a* long term *by a* Person entitled subject *to a* Mortgage.

PRECEDENT CLXXV.

BY PERSON ENTITLED SUBJECT TO A MORTGAGE.

THIS INDENTURE, made the —— day of ——, between A. B., of, &c. [*mortgagor and declarant*], of the first part, C. D., of, &c. [*mortgagee*], of the second part, and E. F., of, &c. [*grantee to uses*], of the third part. Whereas the said A. B. is beneficially entitled, in right of the term hereinafter mentioned, to possession of the hereditaments specified in the schedule hereto, for the residue of a term of —— years created by an indenture dated the —— day of ——, and expressed to be made between [*parties*], without any trust or right of redemption affecting the said term in favour of any person entitled in reversion expectant on the said term, and without any rent incident to the reversion, and not liable to be determined by re-entry for condition broken, but subject to a mortgage of the said hereditaments to the said C. D. for the residue of the said term, made by an indenture dated the —— day of ——, and expressed to be made between [*parties*], for securing the payment to the said C.D., his executors, administrators, and assigns, of £—— with interest as expressed in the same indenture. Now this indenture witnesseth, that, in exercise of the power in

Parties.

Recital of title to term.

Subject to a mortgage.

Witnesseth.

(*a*) This declaration of intention is added both with a view to the express inclusion of mines and minerals, as to which see *supra*, pp. 26, 78, and also in consequence of the ambiguity noticed *infra*, p. 710, n. (*a*), as to the use of the word "vested."

PRECEDENT CLXXV.

BY PERSON ENTITLED SUBJECT TO A MORTGAGE.

this behalf given by the Conveyancing and Law of Property Act, 1881, the said A. B., with the approbation of the said C. D., DOTH HEREBY DECLARE, that the aforesaid term, or the residue thereof, as regards the said hereditaments specified in the said schedule hereto, and all other hereditaments (if any) to or in which the said A. B. is beneficially entitled or interested in right of the said term shall be, and the same is hereby enlarged into the fee simple. AND THIS INDENTURE ALSO WITNESSETH, that the said C. D. at the request of the said A. B. doth hereby grant, and he the said A. B. doth hereby grant and confirm unto the said E. F. and his heirs, ALL THOSE the said hereditaments specified in the said schedule hereto, and all other the hereditaments (if any) which immediately before the execution of these presents were vested at law or in equity in the said C. D. and A. B., or either of them, for the residue of the aforesaid term, with the mines and minerals within and under the said hereditaments, TO HOLD the premises hereby granted unto the said E. F. and his heirs, TO THE USE of the said C. D., his heirs and assigns, subject to such right or equity of redemption as is, or immediately before the execution of these presents was, subsisting in the said premises or the said term by virtue of the aforesaid indenture of the —— day of —— [*the mortgage*], on payment to the said C. D., his executors, administrators, or assigns, of the aforesaid sum of £——, and the interest due and to grow due for the same (*a*). IN WITNESS, &c.

Declaration that term shall be enlarged into the fee simple.

Witnesseth also.

Confirmation.

Parcels in term.

To the use of the mortgagee subject to subsisting equity of redemption.

THE SCHEDULE above referred to.

(*a*) Under sect. 65, sub-s. 3, of the Conv. Act, 1881, the person in "whom the term was previously vested" is to acquire the fee simple. But the use of the word "vested" in sub-s. 2 (ii) renders its meaning in other parts of the section a matter of some doubt. The second testatum (though probably unnecessary) may, it is thought, be added with advantage, as well as with technical pro-

CLXXVI.

PRECEDENT CLXXVI. — BY TRUSTEES.

DEED *of* ENLARGEMENT *of a* LONG TERM *by* TRUSTEES.

TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of, &c., and C. D., of, &c. [*trustees*], send greeting. WHEREAS by virtue of the will dated, &c., and proved, &c., of X. Y., deceased [*or* an indenture dated the —— day of ——, and expressed to be made between, &c.], the said A. B. and C. D. as trustees, and in right of the term hereinafter mentioned, are in receipt of the rents and profits of the hereditaments [*ut supra*, p. 708]. NOW IN EXERCISE of the power in this behalf given by the Conveyancing and Law of Property Act, 1881, the said A. B. and C. D. do hereby declare that, from and after the execution of these presents, the aforesaid term, or the residue thereof, as regards the said hereditaments specified in the said schedule hereto, and all other hereditaments (if any) of the rents and profits of which the said A. B. and C. D. are in receipt as trustees in right of the said term, shall be, and the same is hereby enlarged into the fee simple, TO THE INTENT that the fee simple of the said premises, including all mines and minerals within

Parties.

Recital of will.

Declaration that term shall be enlarged into the fee simple.

To the intent that the fee simple may

priety. The grant is made to a grantee to uses, as sect. 50 of the Act does not extend to a grant by a person to himself alone.

It has been suggested that the second testatum in this Precedent and the corresponding testatum in Precedent CLXXVII., *infra*, might with more technical propriety be contained in a separate deed. Such a deed (which would of course be endorsed on the enlargement deed) may readily be framed with the aid of the testatum in question. But as in both the present Precedent and Precedent CLXXVII., *infra*, the declaration is by one person, and the conveyance by another or others, there are in law two deeds, and inasmuch as both Precedents were taken from drafts prepared by a very eminent conveyancer, the Editors have not thought fit to alter either of them in this respect. Burton's Compendium of the Law of Real Property, 3rd ed., p. 203, pl. 594, 595, and the observations upon this point of North, J., in *Re Brace*, [1891] 2 Ch. 671, at p. 675, may be referred to.

PRECEDENT CLXXVI.

BY TRUSTEES.

and under the same, may be vested in the said A. B. and C. D., as such trustees as aforesaid (*b*). IN WITNESS, &c.

vest in the declarants as trustees (*a*).

THE SCHEDULE above referred to.

CLXXVII.

PRECEDENT CLXXVII.

BY TENANT FOR LIFE OF TERM SETTLED BY REFERENCE TO LIMITATIONS OF FREEHOLDS.

DEED *of* ENLARGEMENT *of a* LONG TERM *by a* TENANT FOR LIFE, *the term being* SETTLED *to go along with* FREEHOLDS. CONVEYANCE *of the* LAND *to the* USES *of the* SETTLEMENT.

THIS INDENTURE, made the —— day of ——, 19—, BETWEEN A. B., of, &c., widow [*tenant for life*], of the one part, and C. D., &c., and E. F., of, &c. [*trustees*], of the other part. WHEREAS W. B., late of ——, in the county of ——, deceased, was, at the respective dates of his will and death hereinafter recited, seised of the hereditaments in the parish of ——, in the county of ——, the particulars whereof are specified in the first schedule hereto (other than and except such of the same hereditaments as are also described in the second

Parties.

Recital that testator was seised in fee simple of freeholds and possessed of leaseholds held for several long terms;

(*a*) See *supra*, p. 709, n. (*a*).

(*b*) If the term were held by trustees for sale, the recital would be to the effect that by virtue of the will or settlement the hereditaments are vested in the parties for the residue of the term upon trust for sale, and the operative part would be the same as in this Precedent, except that, for the reference to other hereditaments of the rents and profits of which the trustees are in receipt, would be substituted a reference to other hereditaments vested in the trustees for the residue of the term upon trust for sale. An enlargement deed by the personal representatives of a deceased person may easily be framed from these suggestions, and if there be incumbrances, it would be well to add a second testatum as in Precedent CLXXV., *supra*, p. 709, *mutatis mutandis*, or a separate conveyance as there suggested.

PRECEDENT CLXXVII.

BY TENANT FOR LIFE OF TERM SETTLED BY REFERENCE TO LIMITATIONS OF FREEHOLDS.

schedule hereto (*a*)), for an estate in fee simple in possession, free from incumbrances, and was possessed of the said hereditaments described in the said second schedule hereto, for the several and respective residues then to come, of the several terms of years mentioned in the last-mentioned schedule opposite the descriptions of such hereditaments respectively. AND WHEREAS the said W. B. duly made and executed his will, dated the 30th day of March, 1860, and thereby gave and devised all the messuages, farms, lands, tenements, and hereditaments situate in the aforesaid parish of —— of or to which he should be seised or entitled at the time of his decease, and which might be of freehold tenure, to the use of his wife, the said A. B. and her assigns during her life, without impeachment of waste, with remainders over in settlement, And the said testator by his said will bequeathed all his leasehold estates situate and being within the aforesaid parish of ——, unto the said C. D. and E. F., their executors, administrators, and assigns, for all his the said testator's estate, terms, and interests therein respectively, UPON trust that the said C. D. and E. F., or the survivor of them, or the executors or administrators of such survivor, should hold the same premises upon such trusts, and with and subject to such powers and provisions as should as nearly correspond with the uses, trusts, powers and provisions thereinbefore limited and declared concerning his said freehold hereditaments situate in the same parish as the different tenure and quality of the premises and the rules of law

—and of his will devising the freeholds in settlement, and bequeathing the leaseholds to trustees upon corresponding trusts.

(*a*) The reason in this case for two schedules is that the freehold and leasehold properties are intermixed, but believed to be distinguishable, and the first schedule contains the present descriptions of both freeholds and leaseholds (noting the supposed tenures), and the second schedule contains the ancient unquestioned descriptions of the leaseholds. Variations will be required in the case in which there is no intermixture, and in which the tenures cannot be distinguished. See pp. 212, n., 213, n., *supra*.

PRECEDENT CLXXVII.

BY TENANT FOR LIFE OF TERM SETTLED BY REFERENCE TO LIMITATIONS OF FREEHOLDS.

and equity would permit, but so as not to increase or multiply charges, and so that the said leasehold premises should not for the purposes of transmission vest absolutely in any person thereby made tenant in tail male by purchase of the said freehold hereditaments, unless such person should attain the age of twenty-one years, but on his decease under that age should devolve in the same manner as if they had been freehold of inheritance and had been included in the devise thereinbefore contained: AND WHEREAS the said testator died on the —— day of ——, and his said will was proved in the —— Registry, on the —— day of ——, 18—: AND WHEREAS the ultimate beneficial interest in the said terms specified in the said second schedule hereto has not become absolutely and indefeasibly vested in any person: AND WHEREAS the said A. B. is, as hereinbefore appears, beneficially entitled, in right of the several terms aforesaid respectively, to possession of the said hereditaments specified in the said second schedule hereto comprised in the said terms respectively, and there is no trust or right of redemption affecting any of the said terms in favour of any person entitled in reversion expectant on the same terms, and there is no rent incident to the reversion of any of the said terms now subsisting, and the said terms are respectively not liable to be determined by re-entry for condition broken: NOW THIS INDENTURE WITNESSETH, that in consideration of the premises and in exercise of the power in this behalf contained in the Conveyancing and Law of Property Act, 1881, she the said A. B. doth hereby declare that the several terms of years specified in the said second schedule hereto, or the several residues thereof respectively, as regards the hereditaments specified in the same schedule, and now vested in the said C. D. and E. F., for the residues of the said terms respectively upon the subsisting trusts of the hereinbefore recited will, shall, from and after the execution of these presents

Of death of testator and proof of his will.

That ultimate beneficial interest has not become absolutely vested.

Of right of tenant for life to terms.

Witnesseth.

Declaration that terms shall be enlarged into fee simples.

PRECEDENT CLXXVII.

BY TENANT FOR LIFE OF TERM SETTLED BY REFERENCE TO LIMITATIONS OF FREEHOLDS.

by the said A. B., be, and the same are hereby enlarged into the fee simple, To the intent that the same several hereditaments, including the mines and minerals within and under the same, may be vested in the said C. D. and E. F. in fee simple: AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises, and in obedience to the direction in this behalf in the aforesaid Act contained, they, the said C. D. and E. F. do and each of them doth hereby grant unto the said A. B. and her heirs, ALL THE SAID hereditaments specified in the said second schedule hereto, or otherwise comprised in the declaration hereinbefore contained, TOGETHER with the mines and minerals within and under the same, To HOLD the premises hereinbefore granted unto the said A. B. and her heirs, To the uses upon the trusts and with and subject to the powers and provisions, in and by the hereinbefore recited will, limited and declared concerning the said freehold hereditaments in the said parish of ——, thereby devised as aforesaid, so far as the same uses, trusts, powers, and provisions are now subsisting or capable of taking effect, but so as not to increase or multiply charges (*a*). IN WITNESS, &c.

To the intent that the premises may be vested in the trustees in fee simple.

Witnesseth also.

Grant of the premises.

To the uses declared by the will of the freeholds.

THE FIRST SCHEDULE above referred to.

THE SECOND SCHEDULE above referred to.

(*a*) See Conv. Act, 1881, s. 65, sub-s. 5, which directs a conveyance in the case supposed in the Precedent. And see p. 710, *supra*, n. (*a*), *ad fin.* Where the land is registered, see L. T. Rules, r. 151, and the observations, *supra*, pp. 101, 102, 103.

Articles of Partnership (*a*).

CLXXVIII.

Articles *of* Partnership.

Precedent CLXXVIII.

Articles of partnership.

THIS INDENTURE, made, &c., between A., of, &c., of the one part, and B., of, &c., of the other part, witnesseth, as follows:

Parties.

Agreement to become partners.

I. The said A. and B. will become and remain partners in the business of ——, for the term of —— years from the date of these presents, if both of them shall so long live.

Proviso for the determination of the partnership at the end of the first seven years.

II. Nevertheless the partnership shall terminate at the end of seven years from the date of these presents, if either partner shall desire its termination, and of such his desire shall give not less than six calendar months' previous notice in writing to the other of them, or shall leave such notice at the place where the said business shall for the time being be carried on.

Firm and style.

III. The firm of the partnership shall be ——.

(*a*) As to partnership deeds, see Davidson's Prec. Conv., 3rd ed., vol. v. part ii., pp. 303—338. It has been found impossible to give more than one Precedent of articles, but some alternative and additional clauses will be found at the end of this Precedent. It does not appear that the Partnership Act, 1890 (53 & 54 Vict. c. 39), has changed in any important respect the law of partnership, or rendered necessary any alteration in the form of articles; but there is some doubt whether under sect. 31 the assignment by a partner of his share in the business works (as before the Act) a dissolution, and a provision relating to that will be found among the alternative and additional clauses above referred to.

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IV. The business of the partnership shall be carried on at ——, or at such other place or places as the partners shall hereafter determine.

Place of business.

V. Both the partners will at all times diligently employ themselves in the business of the partnership, and carry on the same for the greatest advantage.

Partners to attend to the business.

VI. Neither partner shall, either directly or indirectly, engage in any business except the business of the partnership, and upon account thereof.

Partners not to be engaged in any other business;

VII. Neither partner shall take any apprentice, or hire or dismiss any clerk, traveller, workman, or servant, without the consent of the other partner.

—nor to hire or dismiss any servant without mutual consent.

VIII. The capital of the partnership shall consist of the sum of £——, to be brought in by the partners in equal shares.

Capital,—amount, and contribution of, and employment of.

IX. The said capital and the profits arising therefrom (including the premiums to be paid for any apprentice to be taken by either of the partners), shall (subject as hereinafter is mentioned) be employed in the said business.

X. The rent of the houses, mills, and buildings in —— aforesaid, or of any other buildings where the said business shall be carried on, and the cost of repairs and alterations, and all rates, taxes, payments for insurance, and other outgoings whatsoever in respect of the same, and the wages and remuneration of all persons employed in the said business, and all other monies to become payable on account of the said business, and all losses which shall happen in the same, shall be paid out of the capital of the partnership and the profits arising therefrom, or, if the same shall be deficient, by the partners in equal shares.

Outgoings of the partnership to be paid out of the capital and profits, or, in case of deficiency, by the partners, in equal shares.

XI. When there shall be occasion to give any security or undertaking for the payment of money on account of the partnership (except when the contrary shall, in the common course of business, be unavoidable), the same shall be signed by both partners.

That both partners shall sign securities for money;

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ARTICLES OF PARTNERSHIP.

—and any security signed by one alone to be the separate liability of the partner giving it.

XII. If (except in the case aforesaid) either partner shall give any such security or undertaking which shall not be signed by the other partner, the same shall be deemed to be given on the separate account of the partner so giving it, and he shall satisfy the same out of his separate estate, and shall indemnify the other partner from all expenses on account thereof.

Either partner lending or giving credit to any person whom the other shall previously have forbidden him to trust, to make good the deficiency.

XIII. If either partner shall lend any of the monies, or deliver upon credit any of the goods of the partnership to any person or persons whom the other partner shall previously, in writing, have forbidden him to trust, the partner so lending or delivering shall pay to the partnership so much ready money as shall be equal to the full amount or value of the money or goods which he shall so lend or deliver.

Neither partner, without the consent of the other, to enter into any contract above a certain amount on pain of the same being deemed his private contract.

XIV. If either partner shall buy any goods or articles exceeding the value of £——, without the previous consent in writing of the other, the other partner shall have the option either to take such goods or articles on account of the partnership, or to let the same remain the separate property of the partner who shall have so bought the same.

Neither partner, without the consent of the other, to become surety, or do any act whereby the partnership property may be taken in execution.

XV. Neither partner shall, without the previous consent in writing of the other, enter into any bond or become bail or security for any person, or subscribe any policy of insurance, or do, or willingly suffer to be done, anything whereby the capital or property of the partnership may be extended or taken in execution.

Each partner to pay his private debts and to indemnify the partnership against them.

XVI. Each partner shall punctually pay his separate debts, and indemnify the other partner, and the capital and property of the partnership, against the same and all expenses on account thereof.

Books of account to be

XVII. Books of account shall be kept by the partners, and proper entries made therein of all the sales, purchases, receipts, payments, engagements, transactions, and property of the partnership; and the said books of accounts, and all securities, papers, and writings of the

partnership, shall be kept at the counting-house in —— aforesaid, or at such other place where the business shall be carried on, and each partner shall have free access at all times to examine and copy the same.

Books to be kept, and remain, with all partnership documents, at the place of business.

XVIII. On the —— day of ——, in the year ——, and on the —— day of —— in every succeeding year, a general account shall be made and taken by the partners of all the sales, purchases, receipts, payments, engagements, and transactions, of the partnership during the then preceding year, and of all the capital, property, engagements, and liabilities for the time being of the partnership; and the said general account shall, immediately after the same shall be made and taken, be written into two books, and be signed in each such book by each partner; and after such signature, each partner shall keep one of the said books, and shall be bound by every such account, except that, if any manifest error be found therein by either partner, and signified to the other partner within twelve months after the same shall have been so signed by both of them, such error shall be rectified.

Annual accounts and valuations to be made on a certain day in each year.

XIX. The partners shall be entitled to the net profits arising from the said business, and remaining after the payments hereinbefore directed to be made thereout, in equal shares.

Partners to have the net profits in equal shares.

XX. In each year it shall be lawful for each partner to draw out of the net profits of the said business, by equal quarterly payments, on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, the sum of £—— for his separate use; but if, at the end of any year, it shall appear, upon taking the general annual account, that the net profits of such year shall not have amounted to the sum of £—— [*the total yearly amount of the quarterly allowances to both partners*], in such case, immediately after such general annual account shall have been taken, each partner shall repay to the partnership the excess (if any) of the amount

Partners may every year draw certain quarterly sums out of the net profits; subject to a provision for refunding at the end of the year in case of deficiency.

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of the sum which he shall actually have received in respect of such quarterly payments over the sum which he shall have been entitled to receive as his share of the net profits of the said business.

On the expiration or determination of the partnership, accounts to be taken and settled—and provision made for debts and liabilities;

XXI. Within six calendar months after the expiration of the partnership, otherwise than by the death of either partner, a general account shall be taken by the partners of all the capital, property, engagements, and liabilities of the partnership, and immediately after such last-mentioned account shall have been so taken and settled, the partners shall forthwith make due provision for the payment of the debts, and meeting all other liabilities of the partnership, and subject thereto all the property of the partnership shall be divided between the partners in equal shares, and such instruments in writing shall be executed by the partners respectively for facilitating the getting in of the debts due to the partnership, and for vesting the whole right in the said respective shares of the said property in the partner to whom the same respectively shall upon such division belong, and for releasing to each other all claims on account of the partnership, and otherwise as are usual in cases of the like nature.

—and the residue of the partnership property to be divided in equal shares, and all necessary releases and other instruments executed.

Provision in case one partner die during the partnership, for ascertaining the sum to be paid to his representatives,

XXII. If either partner shall die during the partnership, his executors or administrators shall, if such death shall happen before the day hereinbefore appointed for the first general annual account, be entitled to the capital brought in by such deceased partner; or, if the same shall happen after the day hereinbefore appointed for the first annual account, shall be entitled to such sum of money as the share of the deceased partner of the capital and property of the partnership shall, upon the then last general annual account, amount to, or as such share would have amounted to in case such account had been taken on the —— day of —— [*the proper day for taking such account*], immediately preceding such death; and in either case the executors or administrators of the deceased

partner shall also be entitled to an allowance, after the rate of £— per cent. per annum, upon the capital, or share of capital, and property (as the case may be), of such deceased partner, in lieu of profits, from the commencement of the partnership, or from the then last general annual account (as the case may be), to the time of such death; and the surviving partner, his executors or administrators, shall pay such allowance in lieu of profits on demand, and shall, within —— next after the death of the deceased partner, execute and deliver to his executors or administrators a bond in a penalty double the principal conditioned for the payment of the said principal sum to which they shall become entitled as aforesaid, with interest thereon after the rate of £— per cent. per annum from such death, in manner following (that is to say), one third part of such principal sum, with the interest on the same third part, at the end of six calendar months from the date of such bond; one other third part with interest thereon at the end of twelve calendar months from the date of such bond; and the remaining third part, with interest thereon, at the end of eighteen calendar months from the date of such bond.

—with a certain allowance in lieu of profits;

—and determining the mode and time of payment and the security to be given by the surviving partner,

XXIII. The surviving partner, his executors or administrators, shall also execute and deliver a bond in a sufficient penalty to the executors or administrators of the deceased partner for indemnifying them, and the estate of the deceased partner, from the debts, engagements, and liabilities of the partnership at or after such death, and from all expenses on account of the same, and the executors or administrators of the deceased partner shall release and assign unto the surviving partner, his executors or administrators, all their share, right, title, and interest in the capital and property of the partnership, and empower him and them, as much as in them lies, to recover and receive the same.

—and for the execution of proper indemnities and releases.

XXIV. Whenever any difference shall arise between the parties hereto or their respective executors or adminis-

Arbitration clause.

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trators touching these presents, or anything herein contained, or the operation hereof, or the rights, duties, or liabilities of either party in connection with the premises, the matter in difference shall be referred to two arbitrators, one to be appointed by each party, pursuant and so as with regard to the mode and consequences of the reference, and in all other respects to conform to the provisions in that behalf of the Arbitration Act, 1889, or any then subsisting statutory modification thereof. IN WITNESS, &c. (*a*).

(*a*) The following are alternative and additional clauses, some of them contemplating a partnership between more than two persons:—

Commencement and duration of partnership.

1. THE partnership shall commence on the —— day of ——, 19—, and shall continue for the period of fourteen years, if the said A., B., and C. or any two of them shall so long live.

Offices vested in one partner to be held in trust for the firm.

2. THE said A., in whom the said offices are now vested for the unexpired residue of a term of —— years, granted by a lease dated the —— day of ——, 19—, shall hold the said offices and the fixtures and office furniture therein, in trust for and as part of the assets of the partnership, and the said A. shall be indemnified by the partnership against the rent reserved by, and the covenants and agreements contained in, the said lease.

Capital.

3. THE capital of the partnership shall consist of the sum of £—— advanced by the said A., and of the sum of £—— advanced by the said B., and the said A. and B. shall be entitled to the said capital in the following shares, that is to say, the said A. to two third shares, and the said B. to one third share; and the said A. and B. shall be entitled to interest payable half-yearly at the rate of £5 per cent. per annum from the commencement of the partnership upon the respective sums advanced by them, and if any partner shall advance any further sum

as capital, he shall be entitled to interest payable half-yearly at the rate aforesaid from the date of the advance, and the principal of such further advances shall be repaid within twelve calendar months after a notice in writing requiring repayment shall have been given to the other partners or partner, or left at the offices for the time being of the partnership.

Partners to be entitled to draw out monthly sums.

4. THE said A. may draw out of the profits of the partnership the annual sum of £——, the said B. the annual sum of £ —, and the said C. the annual sum of £——, by equal monthly payments, on the —— day of every month; but if at the end of any year it shall appear, upon taking the general annual account herein directed, that the share of any partner in the net profits of such year (which for the purposes of this article are to be taken to include interest on capital) shall not have amounted to the sum of £—— [*the total amount of his allowances*], then immediately after such general annual account shall have been taken and signed, he shall refund to the partnership the sum by which the amount which he shall have drawn out exceeds the amount of his share of such net profits for the year.

Not to assign shares without consent.

5. No partner shall assign, charge or encumber his share or interest or any part of his share or interest in the partnership without the previous consent in writing of the other partners or partner, except that the said A. may introduce a son and assign the whole or any part of his share to him.

Sleeping partner not to take any active share in the business.

6. THE said C. shall be considered a sleeping partner, and shall not take any personal share in the business of the partnership.

Partners to be entitled to net profits in specified shares.

7. THE partners shall be entitled to the net profits of the business in the shares following, that is to say, the said A. to three sixth shares, the said B. to two sixth shares, and the said C. to one sixth share, and the share of each partner shall be carried to his credit in the books

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of the partnership, immediately after every such annual account as aforesaid shall have been taken and signed, and may be drawn out at pleasure.

Provision for the retirement of senior partner at the end of any year.

8. IF the said A. shall be desirous of retiring from the partnership at the end of any year ending on the said —— day of ——, and of such desire shall give not less than —— calendar months' previous notice in writing to the other partners or partner, or shall leave such notice at the office for the time being of the partnership, then at the end of such year the partnership, so far as regards the said A., shall determine, and thereupon his share in the net profits, as ascertained at the general annual account appointed to be taken on that day, and all interest upon the capital advanced by him, shall be paid to him within -- calendar months thereafter; and the other partners or partner shall, within the same period, execute and deliver to the said A., his executors or administrators, a bond in a sufficient penalty or covenant for payment to him or them within —— years from the date of such retirement, of the capital for the time being advanced by the said A., together with interest thereon at the rate aforesaid, payable half-yearly.

Provision on death of any partner.

9. IF any partner shall die during the partnership, his executors or administrators shall be entitled to his share in the net profits of the partnership up to the day hereinbefore appointed for taking the next general annual account, and shall be entitled to join with the surviving partners or partner in taking such account, and thereupon the share of the partner so dying, as ascertained by such account, in the net profits, together with all interest upon the capital, if any, for the time being advanced by him, shall be paid to his executors or administrators within —— calendar months thereafter, and the surviving partners or partner shall within such period execute and deliver to the executors or administrators of the partner so dying a bond in a sufficient penalty, or covenant for payment to them within ---- years from the date of such

death, of the capital for the time being (if any) advanced by or belonging to the partner so dying, together with interest at the rate aforesaid, payable half-yearly.

Provision for payment of annuity to senior partner on his retirement, or to his widow on his death.

10. IN addition to the bond or covenant hereinbefore directed to be given to the said A. on his retirement, and to his executors or administrators on his death, whichever event shall happen, the other partners or partner shall execute and deliver to him on his retirement, or on his death to any wife who may survive him, another bond in a sufficient penalty or covenant for the payment to the said A., or to any wife who may survive him, as the case may be, during the period of —— years from the retirement or death of the said A., as the case may be, if he or she shall so long live, of a clear annuity of £——, to be paid by four equal quarterly payments, the first to be made at the end of three calendar months from the retirement or death of the said A.

The other partners to become entitled to his share in certain proportions.

11. UPON the execution and delivery of the bonds or covenants hereinbefore directed to be given on the retirement or death of the said A., his share in the partnership property and effects and the goodwill thereof shall go and survive to the said B. and C. in the following proportions, four sixths to the said B. and two sixths to the said C.

Senior partner not to practise within specified distance after retirement.

12. AFTER the retirement of the said A., he shall not practise as a ——, or hold any office included in the business of the partnership, within a radius of —— miles (*a*) from the offices for the time being of the partnership.

Partners may give professional advice gratis to certain members of their families.

13. EACH partner may, at his own separate risk, and without fee or reward, give professional advice and assistance to any member of his family in the degree of relationship of father, mother, child, grandchild, brother

(*a*) *I.e.*, as the crow flies. See *Mouflet* v. *Cole*, L. R. 8 Ex. 32, and also similar provisions in clauses 18 and 19.

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or sister, or their respective wives or husbands, but in case any emolument shall arise therefrom, the same shall be for the benefit of the partnership.

Senior partner to introduce junior partner, but to have the choice of patients (*a*).

14. THE said A. shall within a reasonable time after the commencement of the partnership introduce the said B. to all the patients consulting the firm; but, except where any particular patient or family shall expressly require the attendance of the said B., the said A. shall have the choice of attending such of the patients consulting the firm as he shall think proper, and where either partner shall attend any patient or family, the other partner shall not in any manner interfere with him in such attendance, or, except in his absence, attend such patient or family, but nevertheless all professional business by either partner shall be carried on for the benefit of the partnership.

Each partner to provide himself with horses, &c.

15. EACH partner shall, during the partnership, provide for himself all such horses and carriages or motor cars as shall be necessary to enable him effectually to attend to the business of the partnership, and shall maintain and keep the same at his sole expense.

If either partner shall go abroad for three months, &c., the other may determine the partnership.

16. IF either partner shall at any time during the partnership, go and remain out of the United Kingdom for three consecutive calendar months without the consent of the other partner, or shall do any act whereby he may be deprived of the privilege of practising as a —— in England, the other partner may, by notice in writing delivered or sent by post to the partner so offending, or left for him at his usual place of abode in England, or at the place of business of the partnership, determine the partnership, and immediately upon such notice being delivered, sent or left, the partnership shall determine.

(*a*) This clause is considered to be of great importance in articles between medical men; and the next following clause is for insertion in similar articles.

Provision for the purchase of offending partner's share.

17. IF the partnership shall be determined under the last preceding article, the partner determining the partnership shall have the option of taking and paying for the share of the offending partner, in the same manner as is herein provided in the case of the death of either partner, if such option be signified in the notice determining the partnership, and if such option shall not be so signified, the partnership affairs shall be wound up in the same manner as if the partnership had expired by effluxion of time.

If the partnership shall be determined under the last provision, the offending partner not to practise within certain limits.

18. IF the partnership shall be determined under the provision mentioned in the last article, the offending partner shall not, during the remainder of the said term of —— years, practise as a —— within —— miles of —— aforesaid, or attend any person by whom the partnership or the other partner shall have been or shall thereafter be employed, and if and whenever there shall be a breach of this present article, the partner committing such breach shall immediately upon every such breach pay to the other partner the sum of £—— as and by way of liquidated damages.

Provision for dissolution on assignment or breach of articles by either partner.

19. IF either partner shall assign his share in the partnership or any part thereof, whether absolutely or by way of mortgage or charge or otherwise, or shall commit or be guilty of a breach of any of the stipulations herein contained [and numbered respectively ——], and the other partner shall within three calendar months after receiving information of such assignment or breach, give to the partner by whom such assignment or breach shall have been made or committed, notice in writing that the partnership shall forthwith determine, or leave such notice at the place where the business of the partnership shall for the time being be carried on, then immediately upon such notice being so given or left the partnership shall determine (but without prejudice to any remedies for the breach of any of the stipulations herein contained), and the partnership affairs shall be

PRECEDENT CLXXVIII.

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wound up in the same manner as if the partnership had expired by effluxion of time, unless the partner by whom such notice shall be given or left shall by the same notice declare his option to take and pay for the share of the other partner in the same manner *mutatis mutandis* as herein is provided in the case of the death of either partner, and if such option shall be so declared, such share shall be taken and paid for accordingly, and the partner whose share shall be so taken shall by the release and assignment to be given by him to the partner by whom such notice shall have been given or left, enter into a covenant with such last-mentioned partner not at any time afterwards either solely or jointly with, or as agent or servant of or traveller for any other person or persons directly or indirectly to carry on or be engaged or concerned or interested in or to solicit or accept orders in the business of a —— or any trade or business connected therewith or to permit or suffer his name to be used or employed in carrying on or in connection with any such business or trade within twenty miles of —— aforesaid (*a*).

(*a*) It may be prudent to have the stamp upon articles of partnership containing a clause such as 10, *supra*, adjudicated, and it is clear that the stamp on an assignment to a son of a partner under clause 5, *supra*, must be adjudicated; see the Finance (1909-10) Act, 1910, s. 74.

Production of Deeds (*a*).

CLXXIX.

ACKNOWLEDGMENT *and* UNDERTAKING *as to Production and Custody of* DEEDS.

PRECEDENT CLXXIX.

BY BENEFICIAL OR FIDUCIARY OWNER.

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*vendor*], of the one part, and B., of, &c. [*purchaser*], of the other part. WHEREAS, by an indenture bearing even date with, but executed before, these presents, and expressed to be made between the said A., of the one part, and the said B., of the other part, in pursuance of a contract for sale therein mentioned, certain hereditaments therein described have been assured unto and to the use of the said B., his heirs and assigns. AND WHEREAS the several deeds and writings specified in the schedule hereto relate as well to the hereditaments comprised in the hereinbefore recited indenture as to other hereditaments belonging to the said A., and on the said contract for sale it was agreed that he should retain

Parties.

Recital of the deed of conveyance of even date;

—that the deeds relate to other estates than those sold.

(*a*) As to the law and practice relating to covenants for production of deeds, see the notes to pp. 662—671, Davidson's Prec. Conv., vol. ii., 4th ed.; Sugd. V. & P., 14th ed., pp. 446—453; Dart, V. & P., 7th ed., pp. 577 *et seq.*; Williams, V. & P., p. 605 *et seq.* The acknowledgment and undertaking, for which provision is made by sect. 9 of the Conv. Act, 1881 (App. IV., *infra*), has superseded the covenant for production formerly in general use. It does not seem to be necessary, though it is clearly proper, and in most cases desirable, that such acknowledgment and undertaking should be under seal. If the instrument be not under seal, it will not of course require a deed stamp, and perhaps need not be stamped at all.

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BY BENEFICIAL OR FIDUCIARY OWNER.

possession of the said deeds and writings and should give such acknowledgment [and undertaking] (*a*) as [are] hereinafter contained. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the premises, he the said A. doth hereby acknowledge the right of the said B. to production of the deeds and writings specified in the said schedule hereto, and to delivery of copies thereof [and doth hereby undertake for the safe custody thereof]. IN WITNESS, &c.

Witnesseth.

Acknowledgment by vendor of right to production, &c. of deeds.

THE SCHEDULE above referred to.

CLXXX.

PRECEDENT CLXXX.

AGREEMENT AS TO TITLE DEEDS OF TWO ESTATES, MORTGAGED TO DIFFERENT PERSONS.

AGREEMENT *for the* DEPOSIT *of* DEEDS *relating to* TWO *Estates Mortgaged to* DIFFERENT *Mortgagees.*

THIS INDENTURE, made, &c., BETWEEN A., of, &c. [*mortgagor*], of the first part, B., of, &c. [*mortgagee*], of the second part, and C., of, &c. [*mortgagee*], of the third part. WHEREAS, by an indenture dated the —— day of — —, and expressed to be made between [*parties*], certain lands and hereditaments in the county of W. (hereinafter called "the said W. Estates") were mortgaged by the said A. to the said B., in fee, for securing the sum of £——, and interest. AND WHEREAS the deeds and writings, specified in the schedule hereto, relate to the title of the said W. Estates, and on the said mortgage were delivered to the said B., and have been deposited by him with Messrs. ——, his bankers. AND WHEREAS,

Parties.

Recital of the mortgage of one estate;

—of the title deeds having been delivered to the mortgagee, and deposited at his bankers;

(*a*) It is thought that a trustee or mortgagee cannot be required to give an undertaking for safe custody, and the words in brackets should be omitted where the vendor has acted in either of those characters. See *Re Agg-Gardner*, 25 Ch. D. 600.

PRECEDENT CLXXX.

AGREEMENT AS TO TITLE DEEDS OF TWO ESTATES, MORTGAGED TO DIFFERENT PERSONS.

by an indenture bearing even date with, but executed before, these presents, and expressed to be made between [*parties*], certain lands and hereditaments in the county of S. (hereinafter called "the said S. Estates") have been mortgaged by the said A. to the said C., in fee, for securing the sum of £——, and interest. AND WHEREAS, the said deeds and writings also relate to the title of the said S. Estates. AND WHEREAS, on the treaty for the said mortgage to the said C., it was agreed that the said parties hereto should enter into the agreements hereinafter contained. NOW THIS INDENTURE WITNESSETH, and in consideration of the premises, it is hereby agreed, that so long as any money shall remain on the said mortgage of the said W. Estates, and also on the said mortgage of the said S. Estates, the said deeds and writings specified in the said schedule hereto shall remain deposited in the banking-house of Messrs. ——, on the account and for the use of the said B. and C., and their respective executors, administrators, and assigns, and that the said B., his executors, administrators, and assigns, and his and their solicitors and agents, and the said C., his executors, administrators, and assigns, and his and their solicitors and agents, shall at all times have access to the said deeds and writings, to examine, copy, or abstract the same, or make extracts therefrom, and for all other reasonable purposes: AND THAT the said deeds and writings shall be produced and used on all occasions on which they may be reasonably required, for the support or manifestation of the title of the said B., his executors, administrators, and assigns, to the said W. Estates, or any part thereof, and of the said C., his executors, administrators, or assigns, to the said S. Estates, or any part thereof; AND THAT, when and if the said mortgage on either of the said Estates shall be paid off, while any money remains on the mortgage of the other of the said Estates, the said deeds and writings shall be delivered and belong to the mortgagee, whose mortgage-money, or

—of the mortgage of another estate;

—that the deeds also relate to the title of the second estate.

Witnesseth.

Agreement that the deeds shall remain deposited, and that both mortgagees shall have access thereto;

—and that the deeds shall be produced on all reasonable occasions;

—and that if either of the mortgagees shall be paid off, the deeds shall be given to the other mortgagee.

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AGREEMENT AS TO TITLE DEEDS OF TWO ESTATES, MORTGAGED TO DIFFERENT PERSONS.

some part of whose mortgage-money, shall still remain unpaid, his executors, administrators, or assigns (*a*). IN WITNESS, &c.

THE SCHEDULE above referred to.

(*a*) See now, as to the right of a mortgagor to inspection of deeds, sect. 16 of the Conv. Act, 1881 (App. IV., *infra*), and see as to the meaning of the word *mortgagor*, sect. 2 (vi.); *Teevan* v. *Smith*, 20 Ch. D. 724; and *Alderson* v. *Elgey*, 26 Ch. D. 567.

Powers of Attorney (*a*).

CLXXXI.

Short power *by a Person going Abroad for Management of his Property* (*a*).

Precedent CLXXXI.

For management of property of person going abroad.

Power to manage real estate;

KNOW ALL MEN by these presents, that I, A., of, &c. [*donor of the power*], hereby appoint B., of, &c. [*attorney*], to be my attorney in my name and on my behalf to

(*a*) As to powers of attorney, see Davidson's Prec. Conv., 5th ed., vol. i. p. 387, n. (*a*); and see *Young* v. *Schuler*, 11 Q. B. D. 651 (where parol evidence was admitted to show that a party signed both in his own right and as attorney); as to an attorney's power to pledge or borrow, *Jonmenjoy Coondoo* v. *Watson*, 9 App. Cas. 561, *Montaignac* v. *Shitta*, 15 App. Cas. 357; *Bryant, Powis & Bryant* v. *La Banque du Peuple*, [1893] A. C. 170; *Jacobs* v. *Morris*, [1901] 1 Ch. 261; [1902] 1 Ch. 816; *Bannatyne* v. *MacIver*, [1906] 1 K. B. 103; as to the signature by attorney of a bankruptcy petition, *Ex parte Wallace*, 14 Q. B. D. 22; as to the signature by an attorney not appointed under seal or a memorandum of association or other document not a deed, *Re Whitley Partners, Limited*, 32 Ch. D. 337; with reference to an attorney's implied powers under the usual authority to sell his principal's estate, *Hawksley* v. *Outram*, [1892] 3 Ch. 359; and with reference to the execution of a bill of sale by attorney, *Furnivall* v. *Hudson*, [1893] 1 Ch. 335; as to the sale of property in mortgage to the donor of the power, *Re Dowson & Jenkins's Contract*, [1904] 2 Ch. 219; as to the grant of probate to an attorney, *In the Goods of Barker*, [1891] P. 251; as to foreign powers, *Chatenay* v. *Brazilian Submarine Telegraph Co.*, [1891] 1 Q. B. 79; as to the delegation of powers by trustees abroad, *Stuart* v. *Norton*, 14 Moore, P. C. 17; as to the execution of powers, protected transactions, and deposit of powers at the Central Office, sects. 46, 47, and 48 of the Conv. Act, 1881 (App. IV., *infra*); and

PRECEDENT CLXXXI.

FOR MANAGEMENT OF PROPERTY OF PERSON GOING ABROAD.

manage and cultivate, or let upon lease for such period and upon such terms as he shall think fit, and to receive the rents of, my real estate of whatever tenure, or any part thereof, and to cut timber for sale or repairs, and to erect, pull down, and repair, buildings on any part of my real estate, and to insure any such buildings against loss or damage by fire, and to make arrangements with tenants, and to accept surrenders of leases, and generally to deal with my real estate, or any part thereof, as effectually as I myself could do; AND ALSO to take all lawful proceedings by way of distress, action or otherwise, for recovery of rent in arrear or for eviction of tenants; AND ALSO to commence or carry on, or to defend at law or in equity, all actions and other proceedings touching my real estate or any part thereof, or touching anything in which I or my real or personal estate may be in anywise concerned; AND ALSO to demand, sue for, enforce payment of, and receive and give discharges for all

—distrain and eject tenants;

—carry on legal proceedings;

—get in debts and personal estate;

as to making powers irrevocable, sects. 8 and 9 of the Conv. Act, 1882 (App. V., *infra*). The former Act, by sect. 40, enables married women (whether infants or not) to appoint attorneys. It is not in all cases necessary that a power should be under seal (*Naylor* v. *Mortimore*, 17 C. B. N. S. 207). The present Precedent is intended as a power for the ordinary management of property during a short absence abroad, and does not intend a sale or mortgage of any part of the property. A fuller power, providing for all such purposes, will be found in Davidson's Prec. Conv., 5th ed., vol. i. pp. 392—395; and a form of power for registered land in Key and Elphinstone's Prec., vol. i. p. 202, 9th ed. If a sale, mortgage, &c., be intended, there should generally be a deed of trust, not a mere power of attorney. In most preceding editions the motive of the appointment was indicated by the words, "being about to go abroad," inserted after the description of the donor, and by way of substitution for the common recital to the same effect. But as these words might, on the principle of *Danby* v. *Coutts & Co.*, 29 Ch. D. 500, be held to limit the exercise of the power to the period of the donor's absence from England, and so make it necessary, in case of such exercise, to prove his absence, they have been omitted in the present edition.

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monies, securities for money, debts, chattels, and other personal estate whatsoever, now belonging or hereafter to belong to me; AND ALSO to settle, and to compromise, and to submit to arbitration all accounts, claims, and disputes between me and any other person; and for all or any of the purposes aforesaid to execute and do all such instruments and things as my said attorney shall think fit; AND, upon receipt of any monies under these presents, to deposit the same with any banker or other person on my behalf, and either in my name or otherwise; AND TO withdraw the same, and to invest the same, or any part thereof, in my name or otherwise, in or upon any such investments, or securities, and in such manner as my said attorney shall think fit; AND ALSO out of such monies to pay any such calls upon shares, premiums upon policies of insurance, expenses of repairs or improvements, and other outgoings in respect of any part of my real or personal estate, as my said attorney shall think fit; AND TO receive the dividends, interest, and income arising from my personal estate, or any part thereof; AND FOR the purposes aforesaid, or any of them, to sign my name to and execute on my behalf all cheques, contracts, transfers, assignments, and instruments whatsoever; and also to appoint and remove at his pleasure any substitute for or agent under him in respect of all or any of the matters aforesaid, upon such terms as my said attorney shall think fit; AND GENERALLY to act in relation to my estate and to the premises as fully and effectually in all respects as I myself could do; I HEREBY undertaking to ratify everything which my said attorney or any substitute or agent appointed by him under the power in that behalf hereinbefore contained shall do, or purport to do, in virtue of these presents. [And I do hereby declare, that this power is irrevocable for twelve calendar months from the date hereof.] IN WITNESS, &c.

—arrange and compromise;

—deposit money with bankers;

—withdraw money and invest;

—pay calls on shares, insurance premiums, and like outgoings;

—receive dividends;

—sign cheques, deeds, &c.;

—appoint substitutes;

—and act generally.

Agreement to ratify acts of attorney.

Power to be irrevocable for a year.

CLXXXII.

PRECEDENT CLXXXII. — TO EXECUTE A CONVEYANCE.

POWER *for executing a* CONVEYANCE *of* FREEHOLDS (*a*).

KNOW ALL MEN by these presents, that I, A., of, &c., hereby appoint B., of, &c., my attorney, in my name and on my behalf, to receive from C., of, &c. [*the purchaser*], or his agent or attorney, the sum of £——, being the price agreed to be paid by the said C. to me for the purchase of certain freehold hereditaments, known as —— farm, situate, &c., and containing —— acres or thereabouts, together with all interest (if any) for the same sum; AND UPON the receipt of the said sum of £——, in my name and as my act and deed, to sign, seal, and deliver a certain indenture, already prepared and engrossed, bearing or intended to bear date on or about the —— day of ——, and expressed or intended to be made between [*parties*], and being or intended to be a conveyance of the said farm and hereditaments to the use of the said C., his heirs and assigns [*or otherwise, as the case may be*]: AND ALSO to receive and in my name

Power to receive purchase-money;

—execute conveyance;

—sign receipt;

(*a*) This Precedent is given as an example of a power for executing simply a specified deed, and can be adapted with slight modification to the execution of a specified deed of any other kind. Such a power, when restricted to the execution of a deed already prepared, is ministerial only, giving the attorney no discretion; and, therefore, may be properly given even where the deed is one made under a trust or power, the exercise of which could not be delegated, *e.g.*, a conveyance on sale by a trustee, or deed appointing new trustees. See *Re Hetling and Merton's Contract*, [1893] 3 Ch. at p. 280. In this Precedent, however, which is supposed to refer to a conveyance by a beneficial owner, a power to receive the purchase-money and a general discretionary power as to effectuating the conveyance are also given to the attorney, which could not be given in a similar power for executing a deed on behalf of a person acting in a fiduciary capacity only. A trustee, however, may authorise a solicitor to receive trust money in manner provided by sect. 17 of the Trustee Act, 1893 (App. XVI., *infra*, *q.v.*).

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TO EXECUTE A CONVEYANCE.

—and act generally in the matter.

and on my behalf to give a proper and effectual receipt for the said sum of £——, and for all interest (if any) thereon: and for that purpose, if he shall think fit, to endorse on the said indenture, and sign, such receipt (*a*): AND ALSO in my name and on my behalf to execute and do all other deeds and things which my said attorney may consider expedient or necessary for conveying and assuring the said hereditaments and all my estate and interest therein, to the use of the said C., his heirs and assigns [*or*, to the uses hereinbefore referred to], I hereby undertaking to ratify all that my said attorney shall do or purport to do by virtue of these presents. IN WITNESS, &c.

(*a*) See sect. 55 of the Conv. Act, 1881 (App. IV., *infra*).

Declaration of Trust.

CLXXXIII.

PRECEDENT CLXXXIII.

OF CONTRIBUTORY LOAN.

DECLARATION *of* TRUST *of* CONTRIBUTORY LOAN.

Parties.

Recital of mortgage;

—that the sum advanced was paid by several persons in specified proportions.

THIS INDENTURE, made, &c., BETWEEN A., of, &c., and B., of, &c., of the first part, the said B., of the second part, and C., of, &c., of the third part [*Recital of mortgage of even date to A. and B. in consideration of* £10,000 *paid by A. and B. out of monies belonging to them on a joint account, see supra*, p. 697]: AND WHEREAS the said sum of £10,000 in the hereinbefore recited indenture expressed to be paid by the said A. and B., was in fact paid as to £5,000, part thereof, by the said A. and B., out of monies belonging to them on a joint account (*a*), as to £2,500, further part thereof, by the said B. out of his own monies, and as to £2,500, the residue thereof by the said C.;

Witnesseth.

Declaration of trust of the mortgage debt;

NOW THIS INDENTURE WITNESSETH, that it is hereby agreed and declared, and in particular the said A. and B. hereby declare, that they the said A. and B., and the survivor of them, and the executors or administrators of such survivor, their or his assigns (which several persons or other the trustees or trustee for the time being of these presents are hereinafter referred to as the said trustees or

(*a*) An investment of this description is of course not open to trustees, unless by virtue of an express power to make it. See *Webb* v. *Jonas*, 39 Ch. D. 660. As to the custody of trust documents, see *Field* v. *Field*, [1894] 1 Ch. 425; *Re De Pothonier*, [1900] 2 Ch. 529; *Re Sisson's Settlement*, [1903] 1 Ch. 262.

trustee), do and shall hold the said sum of £10,000 secured by the hereinbefore recited indenture, and the interest thereon, upon the trusts following (that is to say), as to the sum of £5,000, part of the said principal sum, and the interest for the same, IN TRUST for the said A. and B., their executors, administrators, and assigns; as to the sum of £2,500, further part thereof, and the interest for the same, IN TRUST for the said B., his executors, administrators, and assigns; and as to the sum of £2,500, the residue thereof, and the interest for the same, IN TRUST for the said C., his executors, administrators and assigns: PROVIDED ALWAYS, that the said several sums of £5,000, £2,500, and £2,500, and the interest for the same, shall have no preference or priority as between themselves, but shall be payable rateably and *pari passu* one with another out of the monies received or realised under or by virtue of the hereinbefore recited indenture; PROVIDED ALSO, that if the said A. and B., their executors, administrators, or assigns, or the said B., his executors, administrators, or assigns, or the said C., his executors, administrators, or assigns, shall give to the said trustees or trustee, or leave for them or him at their or his usual or last known places or place of abode in England, notice in writing calling in the monies for the time being belonging under the trusts of these presents to the persons or person by whom such notice shall be given, then and in such case it shall be obligatory on the said trustees or trustee immediately, or with all convenient speed, to require payment of such monies, and it shall also be obligatory on the said trustees or trustee, in case such monies shall not be paid within six calendar months after such notice shall be given or left as aforesaid, to enforce by sale, foreclosure, or otherwise, as may be deemed expedient, the security made by the hereinbefore recited indenture; PROVIDED ALSO, that the power of appointing a new trustee or new trustees of these presents shall be exerciseable by the said A. and B., their

—for the lenders in specified proportions.

Proviso that the loans shall rank *pari passu*.

Proviso that trustees shall be bound to call in debt upon request.

Power of appointing new trustees.

PRECEDENT CLXXXIII.

OF CONTRIBUTORY LOAN.

executors, administrators, or assigns, jointly with the said B., his executors, administrators, or assigns, and the said C., his executors, administrators, or assigns (*a*). IN WITNESS, &c.

(*a*) A transaction of this kind necessarily involves confidence on the part of the lenders in the persons in whose names the mortgage is taken, and a memorandum as follows will therefore often suffice:—

Memorandum of ownership of contributory loan.

"BE IT REMEMBERED that the principal sum of £10,000 secured, with interest for the same after the rate of £— per cent. per annum, to us, the undersigned A., of, &c., and B., of, &c., by the covenant of X., of, &c., contained in an indenture bearing even date herewith, and expressed to be made between [*parties*], and by a mortgage made to us, the undersigned A. and B., by the same indenture of divers freehold messuages, lands, and hereditaments situate at —— in the county of ——, and known as the —— Estate, belongs as to £5,000, part of the said principal sum of £10,000, and the interest thereon, to us, the undersigned A. and B., on a joint account, as to £2,500, further part of the same principal sum, and the interest thereon, to me, the undersigned B., and as to £2,500, the residue of the same principal sum, and the interest thereon, to me, the undersigned C., of, &c. AS WITNESS, &c."

Consent Deed.

CLXXXIV.

Consent *by* Mortgagees *of a* Life Estate *to the Exercise of Powers under the Settlement.*

Precedent CLXXXIV.

By mortgagees to exercise of powers.

THIS INDENTURE, made the —— day of ——, 19—, between A., of, &c., B., of, &c., and C., of, &c. (hereinafter called the mortgagees), of the one part, and D., of, &c., of the other part. Whereas under the will dated the —— day of ——, 18—, and proved, with a codicil thereto, in the —— Registry, on the —— day of ——, 18—, of the late X. Y., who died on the —— day of ——, 18—, the fee simple of divers messuages, lands, and hereditaments by the said will devised or now subject to the limitations thereof is vested in G. and H., as the present trustees of the said will, upon trust to pay to the said D. during his life the surplus rents and profits of the said hereditaments, after making thereout certain payments in the said will mentioned, and after the death of the said D. upon other trusts in the said will expressed, and the said G. and H., as such trustees as aforesaid, have under the said will powers of sale, exchange, enfranchisement, and leasing, and other powers therein expressed to be exerciseable at their discretion over and in relation to all or any of the said hereditaments; And whereas under several indentures, the dates whereof respectively are specified in the schedule hereto, the mortgagees are en-

Parties.

Recital of will creating settlement (*a*);

—of mortgages of life estate;

(*a*) It will be noticed that the settlement created by this will is equitable.

PRECEDENT CLXXXIV.

BY MORTGAGEES TO EXERCISE OF POWERS.

titled to certain annual sums and mortgage debts, the payment whereof is secured upon all the beneficial interest of the said D. under the said will; AND WHEREAS it is apprehended that by force of the provisions of the Settled Land Act, 1882, the consent of the said D., and therefore the consent of the mortgagees, is necessary to sales, exchanges, enfranchisements, and other dealings by the trustees of the said will, and the consent of the mortgagees is also necessary to dealings by the said D. under his statutory powers, and at the request of the said D. the mortgagees have agreed to give such general consent as hereinafter is contained; NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement and in consideration of the premises the mortgagees HEREBY GRANT AND DECLARE unto the said D. that, notwithstanding the several indentures mentioned in the schedule hereto, and notwithstanding every other charge which has already been or may hereafter be granted or given by the said D. to the mortgagees, their executors, administrators, or assigns, it shall be lawful for the said G. and H., and the survivor of them, as such trustees or trustee as aforesaid of the said will, and for other the trustees or trustee for the time being of the said will, to exercise all powers of sale, exchange, enfranchisement, leasing, and other powers conferred by the said will on the trustees or trustee thereof, and also for the said D. to exercise all his statutory powers under the Settled Land Acts, 1882 to 1890, or otherwise, in like manner and as fully and effectually as if the said indentures and charges or any of them had never been executed or made, and every sale, exchange, enfranchisement, lease or other act or thing made or done by the trustees or trustee for the time being of the said will or by the said D. under the respective powers aforesaid shall accordingly take effect, freed and discharged from all incumbrances and claims of the mortgagees, their executors, administrators, or assigns under the said indentures and charges or any of them; PRO-

—that consent of mortgagees to exercise of powers is necessary;

—and agreement to give it.

Witnesseth.

Declaration that trustees and tenant for life may exercise powers notwithstanding mortgages.

VIDED ALWAYS, and it is hereby declared that nothing hereinbefore contained shall in any manner prejudice or affect the rights of the mortgagees, their executors, administrators, or assigns, to or in respect of the monies produced by any sale, exchange, enfranchisement, lease or other act or dealing under the respective powers aforesaid, or the investments representing such monies, or any lands or hereditaments acquired by purchase or taken in exchange, or other property becoming subject to the trusts of the said will. AND IT IS HEREBY FURTHER DECLARED, that the mortgagees, their executors, administrators and assigns, shall be and remain incumbrancers upon the estate or interest for the time being of the said D. under the said will in the same manner and to the same extent as if the consent of the said D. or of the mortgagees, as the case may be, had not become necessary to the exercise by the trustees or trustee for the time being of the said will of the powers thereby conferred on them, or to the exercise by the said D. of his statutory powers (*a*). IN WITNESS, &c.

Mortgagees' right to proceeds of sales and other property arising by exercise of powers not to be prejudiced; —and mortgagees to remain incumbrancers on the estate for the time being of the tenant for life.

THE SCHEDULE above referred to.

(*a*) In a similar deed by mortgagees of a legal life estate, the following covenant might be here appropriately added:—

"AND the said D. doth hereby covenant with the mortgagees that he the said D. will from time to time and at all times at his own cost execute and do or procure to be executed and done every such assurance and thing as shall be necessary for the purpose of legally vesting in the mortgagees, their executors, administrators, or assigns, for the life of the said D., any lands or hereditaments acquired as aforesaid, or as by the mortgagees, their executors, administrators, or assigns shall be reasonably required for that purpose, or for otherwise further or more perfectly assuring unto them the estate and interest for the time being of the said D. under the said will."

Covenant by life tenant for further assurance.

Submission of Scheme under Settled Land Act, 1882.

CLXXXV.

PRECEDENT CLXXXV.

SUBMISSION OF SCHEME UNDER SETTLED LAND ACT, 1882.

SUBMISSION *by a* TENANT *for* LIFE *to* TRUSTEES *of a* SCHEME *for an* IMPROVEMENT *under the* SETTLED LAND ACT, 1882 (*a*).

Heading. IN THE MATTER of the T—— Estate, situate at T——, in the county of L——, settled by a settlement made by the joint operation of the will dated the —— day of ——, 188—, of W—— P——, Esq., deceased, and of an indenture (*b*) dated the —— day of ——, 189—, and expressed to be made between [*parties*]: AND in the matter of the Settled Land Acts, 1882 to 1890.

Address to trustees. To A. B., of, &c., C. D., of, &c., and E. F., of, &c., the trustees of the above-mentioned settlement for the purposes of the above-mentioned Acts.

Submission. I, the undersigned S. P., of —— Park, in the county of K——, widow, the tenant for life in possession under the above-mentioned settlement of the T—— Estate above referred to, do hereby, in pursuance of sect. 26 of the Settled Land Act, 1882, submit for your approval the scheme set forth in the schedule hereto for the execution of an improvement on and for the benefit of the said Estate. AS WITNESS, &c.

Schedule.

THE SCHEDULE above referred to.

Heading. IN THE MATTER of the T—— Estate, situate at T——, in the county of L——, settled by a settlement made by

(*a*) See the Settled Land Act, 1882 (App. VII., *infra*), s. 26.
(*b*) See paragraph 1 of the Scheme.

PRECEDENT CLXXXV.

SUBMISSION OF SCHEME UNDER SETTLED LAND ACT, 1882.

the joint operation of the will dated the —— day of ——, 188—, of W—— P——, Esq., deceased, and of an indenture dated the —— day of ——, 189—, and expressed to be made between [*parties*]: AND in the matter of the Settled Land Act, 1882.

Scheme.

SCHEME for building cottages upon the T—— Estate above referred to.

Title to the estate proposed to be improved.

1. THE T—— Estate above referred to was formerly in mortgage to the above-named testator, W—— P——, and the mortgage debt formed part of his residuary personal estate, which, by his will above-mentioned, was bequeathed upon trusts for investment in land to be settled to the same uses as his estates in the county of K——, and those estates were by the said will devised to uses under which his widow, S. P., of —— Park, in that county, is the tenant for life thereof in possession. The equity of redemption of the T—— Estate was foreclosed in the year 189—, and by the above-mentioned indenture of the —— day of ——, 189—, the fee simple thereof was duly conveyed to the same uses as the said testator's estates in the county of K——. Consequently the said S. P. is now the tenant for life in possession of the said T—— Estate as well as of the said testator's estates in the county of K——.

Area and circumstances of the estate.

2. THE said T—— Estate contains —— acres or thereabouts, and at the time when the equity of redemption thereof was foreclosed as hereinbefore is mentioned, parts of the said estate were unlet or let to indifferent tenants, and the whole estate was in an unsatisfactory and poor condition. Since that time the letting and cultivation of the estate have been improved, and more labourers are employed.

Lack of accommodation for labourers.

3. THERE is not now sufficient accommodation upon or in the immediate neighbourhood of the said estate for the labourers employed thereon, and some of those labourers reside at H——, which is distant nearly two miles from their work.

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SUBMISSION OF SCHEME UNDER SETTLED LAND ACT, 1882.

Proposal to build cottages for labourers.

4. UNDER these circumstances it is very desirable that further accommodation should be provided for the labourers employed on the said estate. And it is therefore proposed to build on some convenient part of the said estate, to be selected by the agent, three pairs of cottages, with proper outbuildings, in accordance with the plans, elevations, and sections hereunto annexed.

Nature and estimated cost of proposed cottages.

5. THERE is also hereunto annexed a specification of the work to be done, and it appears from a builder's estimate obtained by the agent that the proposed cottages and outbuildings can be built and finished, with proper water supply and other conveniences, fit for habitation and use, for the sum of £1,100, to which, in the opinion of the agent, it will be necessary to add £75 for architect's charges, plans, and contingencies. The cost therefore of the improvement herein described will be £1,175.

Agent.

6. THE agent for the said T—— Estate is Mr. M. B., of the firm of M. B. & Co., of —— Street, London, estate agents and surveyors, and the plans, elevations, sections, and specifications hereinbefore referred to have been prepared by him. He is a person of great experience in the management of landed estates, and he has had the entire management of the said T—— Estate since the foreclosure hereinbefore referred to.

Funds available.

7. THERE is now in the hands of the trustees of the said will the sum of £—— cash, or thereabouts, produced by the sale under the power in that behalf given by the Settled Land Act, 1882, of the G—— Estate, which formed part of the said testator's estates in the county of S——, settled (in the events which have happened, and particularly in consequence of the death of the late L. P. without having had any male issue) to the same uses as the said testator's estates in the county of K——. This sum is consequently available as capital money for payment of the costs of improvements upon the T—— Estate, and (being in hand) may be conveniently resorted to for that purpose in preference to the invested capital money,

which is of large amount, and the investments of which it might be inconvenient to disturb.

Proposal that trustees shall approve scheme, and that afterwards application be made to the Court for authority to apply funds.

8. IT is proposed that the trustees of the said will shall approve this scheme, and that afterwards application shall be made to the Court for an order directing or authorizing them to apply out of the said sum of £—— cash any sum or sums, not exceeding altogether the sum of £1,175, in payment for the improvement herein described, by instalments and otherwise in the usual manner as the work proceeds and upon or after the completion thereof.

Promoter of scheme.

9. THIS scheme is suggested by the said S. P. (*a*).

(*a*) As the money is not in Court the scheme need not be submitted to the Court; but an authority for the expenditure will be required under the Settled Land Act, 1882, s. 26, sub-s. 2, and the procedure indicated in Clause iii. of that sub-section is intended to be followed. See *Re Keck's Settlement*, [1904] 2 Ch. 22; *Re Earl of Egmont's Settled Estate*, [1906] 1 Ch. 151. A prospective authority, however, would seem not to be justified by the Act. See the notes to sect. 26 (App. VII., *infra*).

Separation Deed.

CLXXXVI.

PRECEDENT CLXXXVI.

SEPARATION DEED.

DEED *of* SEPARATION *between* HUSBAND *and* WIFE.

Parties.

THIS INDENTURE, made the —— day of ——, 19—, BETWEEN A. B., of, &c. [*husband*], of the first part, C. B., of, &c., the wife of the said A. B., of the second part, and E. F., of, &c., and G. H., of, &c. [*trustees*] (*a*), of the third part: WHEREAS unhappy differences have arisen between the said A. B. and C. B. in consequence whereof they have agreed to live separate from each other, and to enter into the arrangement hereinafter expressed: AND WHEREAS the said C. B. is entitled in possession during her life to the income arising from funds comprised in the settlement made on her marriage with the said A. B., and in the event of her surviving her sister I. K.

Recital of differences, and agreement for separation;

—of wife being entitled to certain life interests in personalty;

(*a*) In cases involving the right to commence judicial proceedings, the intervention of a trustee or trustees may safely be dispensed with. And it appears to be settled, after some doubt, that such intervention is unnecessary in other cases, at any rate where the marriage took place after the commencement of the M. W. P. Act, 1882: *Sweet* v. *Sweet*, [1895] 1 Q. B. 12. A separation deed containing expressly, or by force of a recital such as the first recital in the precedent, an agreement to live apart is not a voluntary instrument: *Re Weston*, [1900] 2 Ch. 164. As to the construction of a *quasi*-separation deed between persons not married, see *Re Abdy*, [1895] 1 Ch. 455. In *Harrison* v. *Harrison*, [1910] 1 K. B. 35, it was held that a covenant contained in an agreement terminating a separation under an order between husband and wife for the payment of a sum to the wife in the event of her obtaining a further separation order was not void as against public policy.

she will, under the will of her father W. K., be entitled to receive, from and after the death of the said I. K. and during the remainder of her own life, the income arising from the funds representing a legacy of £—— thereby bequeathed for the benefit of the said I. K. during her life and afterwards of the said C. B. and her issue and otherwise: AND WHEREAS the said A. B. and C. B. have —— children and no more, namely [*give their names (including M. B. and N. B. afterwards mentioned) and ages*]: NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and for the several considerations herein appearing, IT IS HEREBY AGREED AND DECLARED, and each of them the said A. B. and C. B., so far as the stipulations hereinafter contained are to be performed or observed by him or her, doth hereby covenant with the other of them, and as a separate covenant with the said E. F. and G. H., and they the said E. F. and G. H., so far as the stipulations hereinafter contained are to be performed or observed by the said C. B., do and as separate covenants also each of them doth hereby covenant with the said A. B. as follows (that is to say):

—of there being —— children.

Witnesseth.

Mutual agreement and covenants.

I. THE said C. B. may and shall henceforth during the life of the said A. B. live separate from him as if she were unmarried, and shall be free from his marital control, and neither of them the said A. B. and C. B. shall in any way molest (*a*) or interfere with the other of them, or shall require or by any proceeding whatever attempt to compel the other of them to return to cohabitation (*b*), or shall take any proceedings to obtain a divorce or judicial separation on account of anything already done by the other of them (*c*), [or a decree annulling their

Wife may live separate, and neither shall molest the other.

(*a*) See *Fearon* v. *Earl of Aylesford*, 14 Q. B. D. 793; *Sweet* v. *Sweet*, [1895] 1 Q. B. 12; and *Hunt* v. *Hunt*, [1897] 2 Q. B. 547.

(*b*) See *Clark* v. *Clark*, 10 P. D. 188.

(*c*) See *Gandy* v. *Gandy*, 7 P. D. 168; 30 Ch. D. 57; *Rose* v. *Rose*, 8 P. D. 98; *Izard* v. *Izard*, 14 P. D. 45; *Bishop* v. *Bishop*, *Judkins*

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marriage (*a*)]: AND if any such proceedings shall be taken by either of them on account of anything done subsequently to the date of these presents, nothing already done by the other of them shall be pleaded or admissible in evidence in such proceedings (*b*).

Wife may retain certain personal ornaments, and dispose of her real and personal estate as a feme sole.

II. THE said C. B. may retain as her separate property, and dispose of accordingly, all the articles of personal ornament and dress, and all the personal estate belonging to the said A. B. now in her possession, and all real and personal estate which she is or may hereafter become entitled to, [or which the said A. B. is or may hereafter become entitled to in her right,] and if she shall die in the lifetime of the said A. B. without having disposed of such real and personal estate or any part thereof, then such real and personal estate or so much thereof as may remain undisposed of shall at her death belong to the persons or person who would at her death have become entitled thereto by law had she died seised or possessed thereof intestate and a widow, such persons if more than one to take as tenants in common in the shares in which they would have taken by law in that event (*c*).

v. *Judkins*, [1897] P. 138, where *Gandy* v. *Gandy* was considered and explained. In the absence of such a covenant past offences are not necessarily condoned: *Moore* v. *Moore*, 12 P. D. 193. Nor are they condoned, in the strict sense of that word, even by the effect of such a covenant, but either party is left at liberty to plead them in answer to proceedings by the other; and it is doubtful whether this liberty can be taken away by contract. See *Gooch* v. *Gooch*, [1893] P. 99; *Dowling* v. *Dowling*, [1898] P. 228. In *Brunton* v. *Dixon*, [1892] W. N. 105, the deed contained a proviso avoiding it if the wife took proceedings on account of previous or subsequent offences, and it was held that the proviso was severable and valid as to acts committed before the date of the deed.

(*a*) See *Aldridge* v. *Aldridge*, 13 P. D. 210.

(*b*) See *Rose* v. *Rose*, *ubi supra*; *Norman* v. *Norman*, [1908] P. 6; *Balcombe* v. *Balcombe*, [1908] P. 176.

(*c*) See *Allen* v. *Humphreys*, 8 P. D. 16; *Evans* v. *Evans*, [1892] 2 Ch. 173.

III. THE said C. B., performing and observing the stipulations herein on her part contained [and remaining chaste (*a*)] shall have the sole custody and guardianship of the said M. B. and N. B. during their respective minorities (*b*), [but shall not remove either of them out of England without the consent in writing of the said A. B. (*c*), and shall allow each of them to spend one half of his or her summer and winter holidays with the said A. B. or his relatives in such places [in England] as he or they may desire].

Wife may have the custody of certain children;

—but shall allow them to spend part of the holidays with the father.

IV. EACH of them the said A. B. and C. B. shall have the right at all times to communicate by letter with the children left under or committed to the guardianship of the other of them, and the right of access to such children at convenient times to be settled in case of dispute by two arbitrators [*&c., ut supra*, p. 125, *or* by the trustees or trustee for the time being of these presents].

Access to children.

V. EACH of them the said A. B. and C. B. may by will or otherwise appoint a guardian or guardians after his or her death of the children left under or committed to his or her guardianship, and in the event of this power being exercised by him or her, such children shall remain under the sole control of the guardian or guardians so appointed.

Power to appoint guardians (*d*).

VI. THE said A. B. shall, during the joint lives of himself and the said C. B., if the said C. B. shall so

The husband to pay to the wife an annuity varying in amount.

(*a*) This is, perhaps, not a usual provision where the Court grants permanent maintenance to a divorced wife, but each case depends on its own circumstances: *Wood* v. *Wood*, [1891] P. 272; *Kettlewell* v. *Kettlewell*, [1898] P. 138; *Hart* v. *Hart*, 18 Ch. D. 670.

(*b*) See the Infants Custody Act, 1873 (36 Vict. c. 12); *Hart* v. *Hart*, 18 Ch. D. 670; *Hunt* v. *Hunt*, 28 Ch. D. 606.

(*c*) See *Hunt* v. *Hunt*, *ubi supra*.

(*d*) See the Guardianship of Infants Act, 1886, referred to *supra*, p. 590, n. (*d*). But the clause is not usual, and, if inserted, may, in some cases, require to be supplemented by provisions for the support of the children in question after the death of the parent by whom the power is exercised.

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long perform and observe the stipulations herein on her part contained [and remain chaste (*a*)], pay to the said C. B. for her separate use without power of anticipation (*b*), such an annual sum of money as, when added to the annual income actually for the time being receivable by the said C. B. under the said marriage settlement and will of the said W. K. respectively, will make up for each year an annuity of £—— clear of all deductions except income tax (*c*), the said annual sum to be considered as accruing from day to day, but to be paid in advance by equal quarterly payments on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of —— in every year, commencing on the —— day of —— next; [but no allowance or return of money shall be made in respect of anything once paid under the present clause if the said annual sum shall cease on any other day than one of the said quarterly days (*d*)].

The wife to support herself and pay her debts, and indemnify husband therefrom.

VII. THE said C. B. shall, out of the provisions made for her by the said settlement and will, and by these presents respectively, or otherwise, in all respects support and maintain herself, and pay and discharge all the debts, engagements and liabilities which she

(*a*) See n. (*a*) on p. 751, *supra*. The covenant would not be against public policy if this limitation were omitted; and where there is also a covenant not to molest the two covenants are independent and not reciprocal: *Fearon* v. *Aylesford*, 14 Q. B. D. 792.

(*b*) Cf. the rule as to sums ordered to be paid to a divorced wife for maintenance: *Watkins* v. *Watkins*, [1896] P. 222; and see *Macnaghten* v. *Paterson*, [1907] A. C. 483; *Sprange* v. *Lee*, [1908] W. N. 13.

(*c*) See *Re Barry's Trusts*, [1906] 1 Ch. 768; on appeal, 2 Ch. 358, where under a covenant for payment without mention of income tax it was held that the annuity was payable less tax.

(*d*) This seems unnecessary so far as respects the annuity here provided for, but may be required as regards the children's maintenance provided for by Clause VIII. See *Strangways* v. *Read*, [1898] 2 Ch. 419.

may incur or enter into, and shall indemnify the said A. B., his heirs, executors, and administrators therefrom, and from all actions, proceedings, costs, damages, expenses, claims, demands, and liability on account thereof.

The husband to pay a stated annual sum in respect of each child living with the mother;

VIII. THE said A. B. shall during his life, if the said M. B. and N. B. or either of them shall so long remain under the age of twenty-one years and reside with or under the guardianship of the said C. B., and if the said C. B. shall so long perform and observe the said stipulations herein on her part contained, pay to the said C. B. in respect of each such child for the time being under the age of twenty-one years and resident as aforesaid, an annual sum of £——, clear of all deductions except income tax, to be considered as accruing from day to day, but to be paid as hereinbefore mentioned in relation to the sum required to make up the said annuity of £——, and to be applied by the said C. B. for or towards the maintenance, education and benefit of such child in exoneration of the said A. B., but without liability on the part of the said C. B. to account so long as such child shall be adequately maintained and educated [to the satisfaction of the trustees or trustee for the time being of these presents].

—to be applied for the maintenance and education of the child.

Covenant for further assurance.

IX. EACH of them the said A. B. and C. B., and his or her heirs, executors, and administrators shall at all times execute and do every such assurance and thing as by the other of them, her or his heirs, executors, or administrators [or by the trustees or trustee for the time being of these presents] shall be reasonably required for the purpose of giving full effect to these presents and the stipulations herein contained.

If reconciliation should take place, the deed to be void.

X. IF the said A. B. and C. B. shall be reconciled and return to cohabitation (*a*), [or if their marriage shall be dissolved, or they shall be judicially separated by reason

(*a*) See *Nicol* v. *Nicol*, 31 Ch. D. 524; *Haddon* v. *Haddon*, 18 Q. B. D. 778; and *Re Abdy*, [1895] 1 Ch. 455, where a covenant

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of anything done by either party after the date of these presents (*a*),] then, and in such case the covenants, agreements, and stipulations hereinbefore contained shall forthwith become void, except in respect of proceedings for a breach thereof previously committed.

Trustees (*b*).

XI. [THE said E. F. and G. H. shall be the trustees of these presents, and the powers and authorities hereby vested in the trustees or trustee for the time being of these presents shall devolve upon and be exerciseable by the survivor of them the said E. F. and G. H., and the executors or administrators of such survivor or other the trustees or trustee for the time being of these presents: AND the power of appointing a new trustee of these presents in the place of the said E. F., or of any trustee appointed in his place, shall be exerciseable by the said A. B., and the power of appointing a new trustee in the place of the said G. H., or of any trustee appointed in his place, shall be exerciseable by the said C. B.] IN WITNESS, &c. (*c*).

for payment of an annuity contained in a deed between unmarried persons was held binding notwithstanding resumption of cohabitation. As to what constitutes a return to cohabitation, see *Rowell* v. *Rowell*, [1900] 1 Q. B. 9. In *Re Spark's Trusts*, [1904] 1 Ch. 451, a provision for children of the marriage contained in a separation deed was held to be unaffected by resumption of cohabitation between the husband and wife.

(*a*) The Court has power in the former case to alter the provisions of a separation deed, but not in the latter; see *Gandy* v. *Gandy*, 7 P. D. 77, 168; *Bishop* v. *Bishop*, *Judkins* v. *Judkins*, [1897] P. 138; and *Dowling* v. *Dowling*, [1898] P. 228.

(*b*) This clause will only be needed if powers are vested in the trustees.

(*c*) If the wife is entitled to real or leasehold property not settled to her separate use, such property should be conveyed to her, or to the trustees in trust for her, and she should acknowledge the deed. See Precedents V. and XXIII., *supra*, pp. 135, 180. The husband may, if thought fit, be excluded from all interest in such property by means of a trust corresponding with that in Clause II. Compare the common trusts for the like object in a marriage settlement, *supra*, p. 472. It will be prudent to have the stamp upon the deed adjudicated; see the Finance (1909-10) Act, 1910, s. 74 (5).

Statutory Declarations.

CLXXXVII.

Statutory Declaration *as to* Identity and Possession *of* Parcels (*a*).

Precedent CLXXXVII.

As to identity of parcels.

Declaration.

I, A. B., of ——, do solemnly and sincerely declare as follows:—

As to declarant's knowledge of the parcels of land referred to.

1. I am —— years of age, and have for a period of —— years last past, resided in the neighbourhood of ——, and have for upwards of —— years past been well acquainted with an estate, known as ——, situate in the parish of —— aforesaid, and including the several parcels of land delineated on the plan now produced to me, marked A., and thereon coloured —— [*or* described in the schedule hereto].

As to identity of such parcels.

2. I verily believe, and have no doubt, that the said several parcels of land are part of the lands comprised in and conveyed to W. Z., of, &c., by an indenture dated the —— day of ——, and expressed to be made between [*parties*], according to the description thereof in the same indenture contained, which I have carefully read previously to making this declaration.

As to the possession and receipt of rents of such parcels.

3. During the time I have known the said estate, as aforesaid, the said several parcels of land delineated on the said plan and thereon coloured —— [*or* described in the said schedule] have been the property of, or been in

(*a*) As to statutory declarations relating to identity of parcels, see Dart, V. & P., vol. i., 7th ed., p. 162, and Dav. Prec. Conv., vol. i., 5th ed., p. 463. And as to the verification of declarations made abroad, see the Commissioners for Oaths Act, 1889, ss. 6, 11.

PRECEDENT CLXXXVII.

AS TO IDENTITY OF PARCELS.

the possession of, L. M., N. O., and P. Q. successively, namely, of the said L. M., from the year —— to the year —— [*and so on*]. And such respective persons have during such respective periods, as I verily believe, been in the free and uninterrupted possession and enjoyment, or receipt of the rents and profits of such several closes of land and premises with the appurtenances thereof. AND I MAKE this declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835 (*a*). DECLARED AT, &c.

CLXXXVIII.

STATUTORY DECLARATION *as to* PEDIGREE (*b*).

PRECEDENT CLXXXVIII

AS TO PEDIGREE.

I, L. B., of ——, spinster, do solemnly and sincerely declare as follows:—

Declaration; —as to marriage of declarant's parents;

1. I AM —— years of age, and am one of the children of the late A. B., of ——, by B.B., his wife, formerly B. K., spinster, who as I have been informed and believe, were married in the parish church of ——, on the —— day of ——. The said A. B. and B.B. are the persons respectively referred to in the marriage certificate produced to me at the time of making this declaration, and marked ——.

—as to the children of the marriage;

2. I HAVE always understood and believe that the said A. B. had three children and no more by the said B. B., namely, two sons, named respectively D. B. and E. B., and one daughter, being myself.

—that one of such children has not been heard of for many years,

3. THE SAID D. B. was, as I have always understood, born at ——, in the kingdom of Italy, on the —— day of ——. In the year 18—, he sailed for Australia, in the

(*a*) See the Conv. Act, 1881 (App. IV., *infra*), s. 68.

(*b*) As to statutory declarations relating to matters of pedigree, see Dart, V. & P., vol. i., 7th ed., pp. 388 *et seq.*

ship ——, from Liverpool, since which time no tidings of him have ever been received by any of his family, and I verily believe him to be dead, and that he died a bachelor and intestate.

and is believed to have died a bachelor and intestate;

4. I HAVE been informed and believe that the said E. B. was born at ——, on the —— day of ——. He was married only once, namely, to F. B., formerly F. M., spinster, with whom he intermarried on the —— day of ——, at the parish church of ——, as I know from having been present at the marriage. The said E. B. lived between the years —— and —— at ——, and he lived from some time in the year —— till the time of his death, which occurred on the —— day of ——, at ——. The said E. B. is the person of that name mentioned in the three several certificates of baptism, marriage, and burial, now produced to me, and marked ——, ——, and —— respectively. The said F. B. is still living, and resides at ——.

—as to the marriage and death of another of such children;

5. THERE was issue of the marriage of the said E. B. and F. B. one child only, named G. B., who was born on the —— day of ——, and died on the —— day of ——, at the age of —— years (*a*), and without having been married. The said G. B. is the person of that name mentioned in the certificates of baptism and burial now produced and shown to me and marked with the letters —— and —— respectively.

—as to the failure of issue of the last-mentioned marriage;

6. I KNEW and was well acquainted with H. E., one of the trustees of the settlement made on the marriage of the said E. B. and F. B., who resided and died in the month of ——, at ——. The paper writing now produced to me marked ——, is a certificate of his burial. AND I MAKE, &c. [*supra*, p. 756]. DECLARED AT, &c.

—as to the death of one of the trustees of the settlement made on the last-mentioned marriage.

(*a*) *Semble*, an infant.

Notices.

CLXXXIX.

PRECEDENT CLXXXIX.

NOTICE TO QUIT.

NOTICE *to* QUIT *by* LANDLORD *to* TENANT *from Year to Year.*

I, THE UNDERSIGNED, A. B., of, &c. (*a*) [*landlord*], hereby give you notice to quit and deliver up to me on the —— day of —— next, [*or* at the expiration of the year of your tenancy, which will expire at or next after the end of half a year from the time of your being served with this notice (*b*),] the possession of all that farm and premises called —— Farm, situate in the parish of ——, in the county of ——, held by you of me as tenant from year to year. Dated this —— day of ——, 19—.

To C. D. [*tenant*].

(*a*) If given by an agent, the words "As the agent for and on behalf of your landlord, —— of ——, in the county of ——," should be here inserted. See, however, *Jones* v. *Phipps*, L. R. 3 Q. B. 567.

(*b*) Where the commencement of the tenancy is not known, it is better to use the words between brackets, instead of stating the particular day, as a notice to deliver up the tenancy on a wrong day, being less than the half-year, is bad, and a notice given in general terms as in the text, has been decided to be a good notice. See *Doe* d. *Williams* v. *Smith*, 5 Ad. & Ell. 350; compare *Sandill* v. *Franklin*, L. R. 10 C. P. 377; *Sidebotham* v. *Holland*, [1895] 1 Q. B. 378.

CXC.

NOTICE *by* LESSEE *to* LESSOR *of intention to* DETERMINE *Lease*.

PRECEDENT CXC.

NOTICE OF DETERMINING LEASE.

IN PURSUANCE of a power contained in an indenture of lease dated the —— day of ——, 18—, and made between you of the one part and me the undersigned A. B., of, &c. [*lessee*], of the other part, I hereby give you notice that I intend to determine the said lease on the —— day of ——, 19—, and that I shall deliver up to you the possession of the premises therein comprised on the same day. Dated the —— day of ——, 19—.

To C. D. [*lessor*].

CXCI.

NOTICE *by* PURCHASER *of a* LEGACY *to* SURVIVING EXECUTOR.

PRECEDENT CXCI.

NOTICE BY PURCHASER OF LEGACY TO EXECUTOR.

I, THE UNDERSIGNED, A. B., of, &c. [*purchaser*], hereby give you notice that by an indenture dated the —— day of ——, 19—, and expressed to be made between [*parties*], the legacy of £—— bequeathed to the said E. F. by the will of X. Y., of, &c., deceased, of which you are the surviving executor, has been assigned to me, my executors, administrators and assigns absolutely, and I require you to pay the same to me. Dated this —— day of ——, 19—.

To C. D. [*executor*].

CXCII.

PRECEDENT CXCII.

NOTICE BY PURCHASER OF REVERSIONARY INTEREST.

NOTICE *by the* PURCHASER *of a* REVERSIONARY *Interest in a* SHARE *of* CONSOLS *to the* TRUSTEES *of a* MARRIAGE SETTLEMENT (*a*).

I, THE UNDERSIGNED, G. H., of, &c. [*purchaser*], hereby give you notice that by an indenture dated the —— day of ——, 19—, and expressed to be made between [*parties*], all that the one equal undivided fifth part or share of the said D. B., one of the children of A. B., of, &c., and C. B. his wife, in the sum of £——, Two-and-a-half per Cent. Consolidated Stock, now standing in your names, as trustees of the settlement made upon the marriage of the said A. B. and C. B., was assigned by the said D. B. to me, my executors, administrators, and assigns absolutely (*b*), subject to the successive life interests therein of the said A. B. and C. B. Dated this —— day of ——, 19—.

To C. D. and E. F. [*trustees*].

(*a*) Notice should always be given to the trustees of a marriage settlement or other instrument on any sale or mortgage of a reversionary interest in personalty, in order to prevent any subsequent purchaser or mortgagee gaining priority by giving a prior notice to the trustees.

(*b*) This form can be adapted to the case of a mortgage. See Precedent CXCIV., *infra*.

CXCIII.

Notice *to* Mortgagor *by* Surviving Mortgagees *with* Power *of* Sale, *of intention to* exercise Power *of* Sale *if all* Principal *Money and* Interest *is not paid by a given day.*

Precedent CXCIII.

Notice by mortgagees of intention to exercise power of sale.

We, A. B., of, &c., and C. D., of, &c., as the surviving mortgagees under an indenture dated the —— day of ——, 18—, and expressed to be made between [*parties*], hereby require you to pay off the principal money and interest thereby secured, and our costs, on or before the —— day of ——, 19— [*a day not less than —— calendar months from the service of the notice, according to the time required*], and we hereby give you notice that, unless all the said principal money, interest, and costs are paid on or before that day, we shall sell the hereditaments and premises comprised in the said indenture under the power of sale therein contained [*or* by statute implied]. Dated the —— day of ——, 19—.

To E. F. [*mortgagor*].

CXCIV.

Notice *by a* Second Mortgagee *to a* First Mortgagee.

Precedent CXCIV.

Notice by second to first mortgagee.

I, the undersigned, A. B., of, &c. [*second mortgagee*], hereby give you notice that by an indenture dated the —— day of ——, 19—, and expressed to be made between [*parties*], the hereditaments and premises situate in the parish of ——, in the county of ——, and now in mortgage to you, were conveyed and assured unto and to the use of me, my heirs and assigns [by way of mortgage

PRECEDENT CXCIV.

NOTICE BY SECOND TO FIRST MORTGAGEE.

for securing the sum of £—— and interest (*a*)] subject to your mortgage thereon. Dated the —— day of ——, 19—.

To C. D. [*first mortgagee*].

(*a*) This form can be adapted to the case of the purchase of an equity of redemption, by substituting the words "for ever" for those between brackets.

APPENDICES.

APPENDIX I.

8 & 9 VICT. c. 106 (*a*). 8 & 9 Vict. c. 106.

AN ACT TO AMEND THE LAW OF REAL PROPERTY.

[*Royal Assent, 4th August*, 1845.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows; (that is to say),

REPEAL OF THE ACT 7 & 8 VICT. c. 76.

1. *That so much of an Act passed in the last session of Parliament, intituled "An Act to simplify the transfer of Property," as enacted, that, after the time at which that Act should come into operation, no estate in land should be created by way of contingent remainder; but that every estate, which, before that time, would have taken effect as a contingent remainder, should take effect (if in a will or codicil) as an executory devise, and (if in a deed) as an executory estate of the same nature, and having the same properties, as an executory devise; and that contingent remainders existing under deeds, wills, or instruments, executed or made before the time when that Act should come into operation, should not fail, or be destroyed or barred, merely by reason of the destruction or merger of any preceding estate, or its determination by any other means than the natural effluxion of the time of such preceding estate, or some event on which it was in its creation limited to determine, shall be and is hereby repealed, as from the time of the commencement and taking effect thereof: and that the residue of the said Act shall be*

Repeal of so much of 7 & 8 Vict. c. 76, as abolishes contingent remainders, as from the commencement.

And the residue as from 1st Oct., 1845.

(*a*) See observations on this Act, pp. 1—17, *supra*. The words of the Act printed in italics have, except where otherwise stated, been repealed by the Statute Law Revision Act, 1891.

8 & 9 Vict. c. 106.

and is hereby repealed, as from the first day of October, one thousand eight hundred and forty-five (*a*).

CORPOREAL HEREDITAMENTS TO LIE IN GRANT.

The immediate freehold of corporeal tenements to lie in grant as well as in livery. Stamp duty on grants thereof.

2. *That*, after the *said* first day of October, one thousand eight hundred and forty-five, all corporeal tenements and hereditaments shall, as regards the conveyance of the immediate freehold thereof, be deemed to lie in grant as well as in livery; *and that every deed which, by force only of this enactment, shall be effectual as a grant, shall be chargeable with the stamp duty with which the same deed would have been chargeable in case the same had been a release, founded on a lease or bargain and sale for a year, and also with the same stamp duty (exclusive of progressive duty) with which such lease or bargain and sale for a year would have been chargeable* (*b*).

FEOFFMENTS, ETC., TO BE BY DEED.

Feoffments, partitions, exchanges, leases, assignments, and surrenders required (subject to certain exceptions) to be by deed.

3. *That* a feoffment, made after the said first day of October, one thousand eight hundred and forty-five, other than a feoffment made under a custom by an infant, shall be void at law unless evidenced by deed; and *that* a partition, and an exchange, of any tenements or hereditaments, not being copyhold, and a lease, required by law to be in writing, of any tenements or hereditaments, and an assignment of a chattel interest, not being copyhold, in any tenements or hereditaments, and a surrender in writing of an interest in any tenements or hereditaments, not being a copyhold interest, and not being an interest which might by law have been created without writing, made after the said first day of October, one thousand eight hundred and forty-five, shall also be void at law, unless made by deed; Provided always, that the said enactment, so far as the same relates to a release or a surrender, shall not extend to Ireland (*c*).

FEOFFMENTS, ETC., NOT TO OPERATE BY WRONG AND THE IMPLIED EFFECT OF CERTAIN WORDS ABOLISHED.

Feoffments not to operate by wrong, nor exchanges or partitions to imply any condition, or "give" and "grant" any covenant.

4. *That* a feoffment, made after the said first day of October, one thousand eight hundred and forty-five, shall not have any tortious operation; and *that* an exchange, or a partition, of any tenements or hereditaments, made by deed, executed after the said first day of October, one thousand eight hundred and forty-five, shall not imply any condition in law; and *that* the word "give" or the word "grant,"

(*a*) This section has been repealed by the Statute Law Revision Act, 1875.
(*b*) The latter part of the section was repealed by 13 & 14 Vict. c. 97, s. 6.
(*c*) This section, so far as it refers to the relation of landlord and tenant in Ireland, has been repealed, save so far as it relates to feoffments, partitions, and exchanges, by 23 & 24 Vict. c. 154, s. 104.

in a deed executed after the same day, shall not imply any covenant in law, in respect of any tenements or hereditaments, except so far as the word "give" or the word "grant" may, by force of any Act of Parliament, imply a covenant. 8 & 9 Vict. c. 106.

INDENTURES.

5. *That*, under an indenture, executed after the first day of October, one thousand eight hundred and forty-five, an immediate estate or interest in any tenements or hereditaments, and the benefit of a condition or covenant respecting any tenements or hereditaments, may be taken, although the taker thereof be not named a party to the same indenture; also, *that* a deed, executed after the said first day of October, one thousand eight hundred and forty-five, purporting to be an indenture, shall have the effect of an indenture, although not actually indented. Strangers may take immediately under an indenture; and a deed purporting to be an indenture shall take effect as such.

CONVEYANCE OF CONTINGENT INTERESTS.

6. *That*, after the first day of October, one thousand eight hundred and forty-five, a contingent, an executory, and a future interest, and a possibility coupled with an interest, in any tenements or hereditaments, of any tenure, whether the object of the gift or limitation of such interest or possibility be or be not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent, into or upon any tenements or hereditaments in England, of any tenure, may be disposed of by deed; but *that* no such disposition shall, by force only of this Act, defeat or enlarge an estate tail; and *that* every such disposition by a married woman shall be made conformably to the provisions relative to dispositions by married women, of an Act passed in the third and fourth years of the reign of his late Majesty King William the Fourth, intituled "An Act for the Abolition of Fines and Recoveries, and for the Substitution of more simple Modes of Assurance," or, in Ireland, of an Act passed in the fourth and fifth years of the reign of his said late Majesty, intituled "An Act for the Abolition of Fines and Recoveries, and for the Substitution of more simple Modes of Assurance in Ireland." Contingent and other like interests, also rights of entry made alienable by deed, saving estates in tail;

—and, as regards married women enjoining conformity to 3 & 4 W. 4, c. 74, and 4 & 5 W. 4, c. 92.

DISCLAIMER BY MARRIED WOMEN.

7. *That*, after the first day of October, one thousand eight hundred and forty-five, an estate or interest in any tenements or hereditaments in England, of any tenure, may be disclaimed by a married woman by deed; and *that* every such disclaimer shall be made conformably to the said provisions of the said Act for the Abolition of Fines and Recoveries, and for the substitution of more simple modes of Assurance. Capacity of married women to disclaim estates or interests by deed extended to England.

8 & 9 Vict. c. 106.

PROTECTION OF CONTINGENT REMAINDERS.

Contingent remainders protected, as from 31st Dec., 1844, against the premature failure of a preceding estate.

8. *That* a contingent remainder, existing at any time after the thirty-first day of December, one thousand eight hundred and forty-four, shall be, and, if created before the passing of this Act, shall be deemed to have been, capable of taking effect, notwithstanding the determination, by forfeiture, surrender or merger, of any preceding estate of freehold, in the same manner, in all respects, as if such determination had not happened.

REVERSIONS ON LEASES.

When the reversion on a lease is gone, the next estate to be deemed the reversion.

9. *That*, when the reversion expectant on a lease, made either before or after the passing of this Act, of any tenements or hereditaments, of any tenure, shall, after the said first day of October, one thousand eight hundred and forty-five, be surrendered or merge, the estate which shall for the time being confer as against the tenant under the same lease the next vested right to the same tenements or hereditaments, shall, to the extent and for the purpose of preserving such incidents to, and obligations on, the same reversion, as, but for the surrender or merger thereof, would have subsisted, be deemed the reversion expectant on the same lease.

SCOTLAND.

Act not to extend to Scotland.

10. *That* this Act shall not extend to Scotland.

APPENDIX II.

37 & 38 VICT. c. 78.

37 & 38 VICT. c. 78.

AN ACT TO AMEND THE LAW OF VENDOR AND PURCHASER, AND FURTHER TO SIMPLIFY TITLE TO LAND (*a*).

[*Royal Assent, 7th August*, 1874.]

WHEREAS it is expedient to facilitate the transfer of land by means of certain amendments in the law of vendor and purchaser:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:

Forty years substituted for sixty years as the root of title.

1. In the completion of any contract of sale of land *made after the thirty-first day of December, one thousand eight hundred and seventy-four*, and subject to any stipulation to the contrary in the contract, forty years shall be substituted as the period of commencement of title which a purchaser may require in place of sixty years, the present period of such commencement; nevertheless earlier title than forty years may be required in cases similar to those in which earlier title than sixty years may now be required (*b*).

Rules for regulating obligations

2. In the completion of any such contract as aforesaid, and subject to any stipulation to the contrary in the contract, the

(*a*) The portions of the Act printed in italics have been repealed, except where otherwise stated, by the Statute Law Revision (No. 2) Act, 1893.

(*b*) Under this concluding clause the title to advowsons must still be carried back for 100 years, and the deed creating a term, however ancient, will still be the proper commencement of title thereto (*Frend* v. *Buckley*, L. R. 5 Q. B. 213), though in the latter case the subsequent title need not now be carried back for more than forty years. See *Williams* v. *Spargo*, W. N. 1893, 100 (a case arising upon the sale of a term). As to the commencement of title which can now be required in various cases, see Dart, V. & P., 7th ed., pp. 329 *et seq.* A purchaser who agrees to accept a title of less than forty years has constructive notice of that which he would actually have known if he had required and investigated a forty years' title. *Re Cox and Neve's Contract*, [1891] 2 Ch. 109, at p. 118; *Re Nisbet and Potts' Contract*, [1906] 1 Ch. 386.

37 & 38 Vict. c. 78.

and rights of vendor and purchaser.

obligations and rights of vendor and purchaser shall be regulated by the following rules; that is to say:

First. Under a contract to grant or assign a term of years, whether derived or to be derived out of a freehold or leasehold estate, the intended lessee or assign shall not be entitled to call for the title to the freehold (*a*).

Second. Recitals, statements, and descriptions of facts, matters, and parties contained in deeds, instruments, Acts of Parliament, or statutory declarations, twenty years old at the date of the contract, shall, unless and except so far as they shall be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters, and descriptions (*b*).

Third. The inability of the vendor to furnish the purchaser with a legal covenant to produce and furnish copies of documents of title shall not be an objection to title in case the purchaser will, on the completion of the contract, have an equitable right to the production of such documents.

Fourth. Such covenants for production as the purchaser can and shall require shall be furnished at his expense, and the vendor shall bear the expense of perusal and execution on behalf of and by himself, and on behalf of and by necessary parties other than the purchaser.

Fifth. Where the vendor retains any part of an estate to which any documents of title relate he shall be entitled to retain such documents (*c*).

(*a*) See *Jones* v. *Watts*, 43 Ch. D. 574. It should be observed that this rule has not affected the doctrine that a lessee has constructive notice of his lessor's title (*Patman* v. *Harland*, 17 Ch. D. 353; *Re Nisbet and Potts' Contract*, [1906] 1 Ch. 386). And an intending lessee for building purposes would be imprudent or negligent if he did not stipulate for such title to be shown: *Imray* v. *Oakshette*, [1897] 2 K. B. 218. See in connection with this rule, Conv. Act, 1881 (App. IV., *infra*), s. 3 (1) and s. 13 (1), and Trustee Act, 1893 (App. XVI., *infra*), s. 8 (3) and s. 15. And see *Clayton* v. *Leech*, 41 C. D. 103. In *Re Pursell and Deakin's Contract*, W. N. 1893, 152, where the contract provided that the lessor should deliver an abstract of his title, it was held that this was a "stipulation to the contrary" which entirely excluded the operation of this section.

(*b*) In *Bolton* v. *London School Board* (7 Ch. D. 766) it was held that a forty years' title could not be required where a conveyance twenty years old contained a recital of seisin, but the case has usually been considered of doubtful authority, and has been disapproved by Swinfen Eady, J., in *Re Wallis and Grout's Contract*, [1906] 2 Ch. 206. See also *Re Marsh and Earl Granville*, 24 Ch. D. 11. The rule is confined to recitals of facts, and does not extend to recitals of instruments.

(*c*) See, as to the expense of furnishing attested copies of deeds retained by the vendor, sect. 3 (6) of the Conv. Act, 1881 (App. IV., *infra*), and Dart, V. & P., 7th ed., p. 156. Rule 5 applies only to land (including leaseholds), and accordingly where documents of title relate to personal estate as well as to land, a vendor of the land only cannot retain the

[3. *Trustees who are either vendors or purchasers may sell or buy without excluding the application of the second section of this Act* (*a*). 37 & 38 Vict. c. 78.

4. *The legal personal representative of a mortgagee of a freehold estate, or of a copyhold estate to which the mortgagee shall have been admitted, may, on payment of all sums secured by the mortgage, convey or surrender the mortgaged estate, whether the mortgage be in form an assurance subject to redemption, or an assurance upon trust* (*b*).

5. *Upon the death of a bare trustee of any corporeal or incorporeal hereditament of which such trustee was seised in fee simple, such hereditament shall vest like a chattel real in the legal personal representative from time to time of such trustee* (*c*).

6. *When any freehold or copyhold hereditament shall be vested in a married woman as a bare trustee, she may convey or surrender the same as if she were a feme sole* (*d*).]

[7. *This section, whereby protection and priority by legal estates and tacking was not to be allowed after the commencement of the Act, is not given here, as it has by sect.* 129 *of the Land Transfer Act,* 1875, *been repealed, as to England ab initio, except as to anything duly done thereunder before the commencement of that Act* (*e*), *and as to Ireland by sect.* 73 *of the Conv. Act,* 1881 (*App. IV., infra*).]

Non-registration of will in Middlesex, &c., cured in certain cases.

8. Where the will of a testator devising land in Middlesex or Yorkshire has not been registered within the period allowed by law in that behalf, an assurance of such land to a purchaser or mortgagee by the devisee or by some one deriving title under him shall, if

documents under this rule: *Re Williams and Duchess of Newcastle's Contract,* [1897] 2 Ch. 144. As to the operation of the rule, see *Re Lehmann and Walker's Contract,* [1906] 2 Ch. 640.

(*a*) This section has been repealed and re-enacted in sect. 15 of the Trustee Act, 1893 (App. XVI., *infra*).

(*b*) Repealed by sect. 30 of the Conv. Act, 1881 (App. IV., *infra*). As to deaths after 31st December, 1881, see *supra,* pp. 51 *et seq.*

(*c*) This section was repealed as to England by sect. 48 of the Land Transfer Act, 1875 (38 & 89 Vict. c. 87), except as to anything done thereunder before the commencement of that Act (1st January, 1876), and instead thereof it was enacted "that upon the death of a bare trustee intestate as to any corporeal or incorporeal hereditament of which such trustee was seised in fee simple, such hereditament shall vest like a chattel real in the legal personal representative from time to time of such trustee," but such enactment was not to apply to lands registered under that Act. The last-mentioned section is repealed by sect. 30 of the Conv. Act, 1881, which also (by sect. 73) repeals the section in the text as to Ireland, as regards deaths after the 31st December, 1881. See also *supra,* p. 51; and, as to the meaning of the words "bare trustee," *Re Docwra, ubi infra,* and *Re Cunningham and Frayling,* [1891] 2 Ch. 567.

(*d*) See *Re Docwra, Docwra* v. *Faith,* 29 Ch. D. 693. This section has been repealed and re-enacted in sect. 16 of the Trustee Act, 1893 (App. XVI., *infra*).

(*e*) See per Baggallay, L. J., in *Robinson* v. *Trevor,* 12 Q. B. D. 423, at pp. 432, 433.

37 & 38 Vict. c. 78.

registered before, take precedence of and prevail over any assurance from the testator's heir-at-law.

Vendor or purchaser may obtain decision of judge in chambers as to requisitions or objections, or compensation, &c.

9. A vendor or purchaser of real or leasehold estate in England, or their representatives respectively, may at any time or times and from time to time apply in a summary way to a judge of the Court of Chancery in England in chambers, in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract), and the judge shall make such order upon the application as to him shall appear just, and shall order how and by whom all or any of the costs of and incident to the application shall be borne and paid (*a*).

A vendor or purchaser of real or leasehold estate in Ireland, or their representatives respectively, may in like manner and for the same purpose apply to a judge of the Court of Chancery in Ireland, and the judge shall make such order upon the application as to him shall appear just, and shall order how and by whom all or any of the costs of and incident to the application shall be borne and paid (*b*).

Extent of Act.

10. This Act shall not apply to Scotland, and may be cited as the Vendor and Purchaser Act, 1874.

(*a*) On such an application the parties are in the same position, as to the evidence admissible, &c., as they would have been on a reference as to title in an action for specific performance: *Re Burroughs, Lynn and Sexton*, 5 Ch. D. 601. In exercising this jurisdiction the Court can not only decide the question submitted, but direct to be done whatever may be the natural consequences of the decision, *e.g.*, rescind the contract, and order return of the deposit with interest, and costs of investigating the title, *Re Hargreaves and Thompson's Contract*, 32 Ch. D. 454; *Re Arbib and Class's Contract*, [1891] 1 Ch. 601; *Re Walker and Oakshott's Contract*, [1901] 2 Ch. 383, where the summons was the vendor's; *Re Haedicke and Lipski's Contract*, *ibid.* 667. Where the only question raised involves the validity of the contract in its inception, there is no jurisdiction to decide it on a summons under this section; but incidental questions arising on the contract may be so decided, notwithstanding that the contract may possibly in the result prove to be invalid or unenforceable: *Re Davis and Cavey*, 40 Ch. D. 601; *Re Wallis and Barnard's Contract*, [1899] 2 Ch. 515; *Re Hughes and Ashley's Contract*, [1900] 2 Ch. 595. The validity of a notice to rescind may be determined under the section, *Re Dames and Wood*, 29 Ch. D. 626; *Re Jackson and Woodburn's Contract*, 37 Ch. D. 44. Questions not concerning the purchaser cannot be decided: see *Re Tippett and Newbould's Contract*, 37 Ch. D. 444.

(*b*) It has been held in *Drapers' Company* v. *M'Cann*, 1 L. R. (Ireland) 13, that each court can order service of a summons under this section on a party out of its jurisdiction.

APPENDIX III.

40 & 41 VICT. c. 33 (*a*).

40 & 41 VICT. c. 33.

AN ACT TO AMEND THE LAW AS TO CONTINGENT REMAINDERS.

[*Royal Assent, 2nd August*, 1877.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:

Cases in which contingent remainders capable of taking effect.

1. Every contingent remainder created by any instrument executed after the passing of this Act, or by any will or codicil revived or republished by any will or codicil executed after that date, in tenements or hereditaments of any tenure, which would have been valid as a springing or shifting use, or executory devise or other limitation, had it not had a sufficient estate to support it as a contingent remainder, shall in the event of the particular estate determining before the contingent remainder vests, be capable of taking effect in all respects as if the contingent remainder had originally been created as a springing or shifting use or executory devise or other executory limitation.

(*a*) See remarks on this Act at p. 15, *supra*.

APPENDIX IV.

44 & 45 Vict. c. 41.

44 & 45 VICT. c. 41 (*a*).

AN ACT FOR SIMPLIFYING AND IMPROVING THE PRACTICE OF CONVEYANCING; AND FOR VESTING IN TRUSTEES, MORTGAGEES, AND OTHERS VARIOUS POWERS COMMONLY CONFERRED BY PROVISIONS INSERTED IN SETTLEMENTS, MORTGAGES, WILLS, AND OTHER INSTRUMENTS; AND FOR AMENDING IN VARIOUS PARTICULARS THE LAW OF PROPERTY; AND FOR OTHER PURPOSES.

[*Royal Assent*, 22*nd August*, 1881.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

I.—PRELIMINARY (*b*).

Short title; commencement; extent.

1.—(1.) This Act may be cited as the Conveyancing and Law of Property Act, 1881 (*c*).

(2.) This Act shall commence and take effect from and immediately after the thirty-first day of December, one thousand eight hundred and eighty-one.

(3.) This Act does not extend to Scotland.

2. In this Act—

(i.) Property, unless a contrary intention appears, includes real and personal property, and any estate or interest in any property, real or personal, and any debt, and any thing in action, and any other right or interest.

Interpretation of property, land, &c.

(ii.) Land, unless a contrary intention appears, includes land

(*a*) See the observations on this Act, *supra*, pp. 18—82. The portions of the Act printed in italics have, except where otherwise stated, been repealed by the Statute Law Revision Act, 1894.

(*b*) See *supra*, p. 19.

(*c*) This Act and the subsequent Acts of 1882 and 1892 may now be cited by the collective title of the Conveyancing Acts, 1881 to 1892. (Short Titles Act, 1896, s. 2.)

of any tenure, and tenements and hereditaments, corporeal or incorporeal, and houses and other buildings, also an undivided share in land:

(iii.) In relation to land, income includes rents and profits, and possession includes receipt of income:

(iv.) Manor includes lordship, and reputed manor or lordship:

(v.) Conveyance, unless a contrary intention appears, includes assignment, appointment, lease, settlement, and other assurance, and covenant to surrender, made by deed, on a sale, mortgage, demise, or settlement of any property, or on any other dealing with or for any property; and convey, unless a contrary intention appears, has a meaning corresponding with that of conveyance:

(vi.) Mortgage includes any charge on any property for securing money or money's worth; and mortgage money means money or money's worth, secured by a mortgage; and mortgagor includes any person from time to time deriving title under the original mortgagor, or entitled to redeem a mortgage according to his estate, interest, or right, in the mortgaged property (*a*); and mortgagee includes any person from time to time deriving title under the original mortgagee; and mortgagee in possession is, for the purposes of this Act, a mortgagee who, in right of the mortgage, has entered into and is in possession of the mortgaged property:

(vii.) Incumbrance includes a mortgage in fee, or for a less estate, and a trust for securing money, and a lien, and a charge of a portion, annuity, or other capital or annual sum; and incumbrancer has a meaning corresponding with that of incumbrance, and includes every person entitled to the benefit of an incumbrance, or to require payment or discharge thereof:

(viii.) Purchaser, unless a contrary intention appears, includes a lessee or mortgagee, and an intending purchaser, lessee, or mortgagee, or other person, who, for valuable consideration, takes or deals for any property; and purchase, unless a contrary intention appears, has a meaning corresponding with that of purchaser; but sale means only a sale properly so called:

(ix.) Rent includes yearly or other rent, toll, duty, royalty, or other reservation, by the acre, the ton, or otherwise; and fine includes premium or fore-gift; and any pay-

(*a*) See p. 732, *supra*, note (*a*).

44 & 45 Vict. c. 41.

ment, consideration, or benefit in the nature of a fine, premium, or fore-gift:

(x.) Building purposes include the erecting and the improving of, and the adding to, and the repairing of buildings; and a building lease is a lease for building purposes or purposes connected therewith:

(xi.) A mining lease is a lease for mining purposes, that is, the searching for, winning, working, getting, making merchantable, carrying away, or disposing of mines and minerals, or purposes connected therewith, and includes a grant or licence for mining purposes:

(xii.) Will includes codicil:

(xiii.) Instrument includes deed, will, inclosure award, and Act of Parliament:

(xiv.) Securities include stocks, funds, and shares:

(xv.) Bankruptcy includes liquidation by arrangement, and any other act or proceeding in law having, under any Act for the time being in force, effects or results similar to those of bankruptcy; and bankrupt has a meaning corresponding with that of bankruptcy:

(xvi.) Writing includes print; and words referring to any instrument, copy, extract, abstract, or other document include any such instrument, copy, extract, abstract, or other document being in writing or in print, or partly in writing and partly in print:

(xvii.) Person includes a corporation:

(xviii.) Her Majesty's High Court *of Justice* is referred to as the Court (*a*).

SALES AND OTHER TRANSACTIONS.

II.—Sales and other Transactions.

Contracts for Sale.

Contracts for Sale.

Application of stated conditions of sale to all purchases (*b*).

3.—(1.) Under a contract to sell and assign a term of years derived out of a leasehold interest in land, the intended assign shall not have the right to call for the title to the leasehold reversion.

(2.) Where land of copyhold or customary tenure has been converted into freehold by enfranchisement, then, under a contract to sell and convey the freehold, the purchaser shall not have the right to call for the title to make the enfranchisement.

(*a*) The words in italics have been repealed by the Statute Law Revision Act, 1898.

(*b*) See *supra*, p. 20.

44 & 45 Vict. c. 41.

(3.) A purchaser of any property shall not require the production, or any abstract or copy, of any deed, will, or other document, dated or made before the time prescribed by law, or stipulated, for commencement of the title, even though the same creates a power subsequently exercised by an instrument abstracted in the abstract furnished to the purchaser; nor shall he require any information, or make any requisition, objection, or inquiry, with respect to any such deed, will, or document, or the title prior to that time, notwithstanding that any such deed, will, or other document, or that prior title, is recited, covenanted to be produced, or noticed; and he shall assume, unless the contrary appears, that the recitals, contained in the abstracted instruments, of any deed, will, or other document, forming part of that prior title, are correct, and give all the material contents of the deed, will, or other document so recited, and that every document so recited was duly executed by all necessary parties, and perfected, if and as required, by fine, recovery, acknowledgment, inrolment, or otherwise.

(4.) Where land sold is held by lease (not including underlease), the purchaser shall assume, unless the contrary appears, that the lease was duly granted; and, on production of the receipt for the last payment due for rent under the lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the lease have been duly performed and observed up to the date of actual completion of the purchase.

(5.) Where land sold is held by underlease the purchaser shall assume, unless the contrary appears, that the underlease and every superior lease were duly granted; and, on production of the receipt for the last payment due for rent under the underlease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the underlease have been duly performed and observed up to the date of actual completion of the purchase, and further that all rent due under every superior lease, and all the covenants and provisions of every superior lease have been paid and duly performed and observed up to that date.

(6.) On a sale of any property, the expenses of the production and inspection of all Acts of Parliament, inclosure awards, records, proceedings of courts, court rolls, deeds, wills, probates, letters of administration, and other documents, not in the vendor's possession, and the expenses of all journeys incidental to such production or inspection, and the expenses of searching for, procuring, making, verifying, and producing all certificates, declarations, evidences, and information not in the vendor's possession, and all attested,

44 & 45 Vict. c. 41.

stamped, office, or other copies or abstracts of, or extracts from, any Acts of Parliament or other documents aforesaid, not in the vendor's possession, if any such production, inspection, journey, search, procuring, making, or verifying is required by a purchaser, either for verification of the abstract, or for any other purpose, shall be borne by the purchaser who requires the same; and where the vendor retains possession of any document, the expenses of making any copy thereof, attested or unattested, which a purchaser requires to be delivered to him, shall be borne by that purchaser.

(7.) On a sale of any property in lots, a purchaser of two or more lots, held wholly or partly under the same title, shall not have a right to more than one abstract of the common title, except at his own expense.

(8.) This section applies only to titles and purchasers on sales properly so called, notwithstanding any interpretation in this Act.

(9.) This section applies only if and as far as a contrary intention is not expressed in the contract of sale, and shall have effect subject to the terms of the contract and to the provisions therein contained.

(10.) This section applies only to sales made after the commencement of this Act.

(11.) Nothing in this section shall be construed as binding a purchaser to complete his purchase in any case where, on a contract made independently of this section, and containing stipulations similar to the provisions of this section, or any of them, specific performance of the contract would not be enforced against him by the Court.

Completion of contract after death (*a*).

4.—(1.) Where at the death of any person there is subsisting a contract enforceable against his heir or devisee, for the sale of the fee simple or other freehold interest, descendible to his heirs general, in any land, his personal representatives shall, by virtue of this Act, have power to convey the land for all the estate and interest vested in him at his death, in any manner proper for giving effect to the contract.

(2.) A conveyance made under this section shall not affect the beneficial rights of any person claiming under any testamentary disposition or as heir or next of kin of a testator or intestate.

(3.) This section applies only in cases of death after the commencement of this Act.

(*a*) See *supra*, p. 23.

Discharge of Incumbrances on Sale.

44 & 45 Vict. c. 41.

Discharge of incumbrances on sale.

Provision by Court for incumbrances, and sale freed therefrom (*a*).

5.—(1.) Where land subject to any incumbrance, whether immediately payable or not, is sold by the Court, or out of Court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court, in case of an annual sum charged on the land, or of a capital sum charged on a determinable interest in the land, of such amount as, when invested in Government securities, the Court considers will be sufficient, by means of the dividends thereof, to keep down or otherwise provide for that charge, and in any other case of capital money charged on the land, of the amount sufficient to meet the incumbrance and any interest due thereon; but in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses, and interest, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reason thinks fit to require a larger additional amount.

(2.) Thereupon, the Court may, if it thinks fit, and either after or without any notice to the incumbrancer, as the Court thinks fit, declare the land to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in Court.

(3.) After notice served on the persons interested in or entitled to the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(4.) This section applies to sales not completed at the commencement of this Act, and to sales thereafter made.

General Words.

General Words.

General words in conveyances of land, buildings, or manor (*b*).

6.—(1.) A conveyance of land shall be deemed to include, and shall by virtue of this Act operate to convey, with the land, all buildings, erections, fixtures, commons, hedges, ditches, fences, ways, waters, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, or any part thereof, or at the time of conveyance demised,

(*a*) See *supra*, p. 24.
(*b*) See *supra*, p. 25.

44 & 45 Vict. c. 41.

occupied, or enjoyed with, or reputed or known as part or parcel of, or appurtenant to the land or any part thereof.

(2.) A conveyance of land, having houses or other buildings thereon, shall be deemed to include and shall by virtue of this Act, operate to convey, with the land, houses, or other buildings, all outhouses, erections, fixtures, cellars, areas, courts, courtyards, cisterns, sewers, gutters, drains, ways, passages, lights, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, houses, or other buildings conveyed, or any of them, or any part thereof, or at the time of conveyance demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to, the land, houses, or other buildings conveyed, or any of them, or any part thereof.

(3.) A conveyance of a manor shall be deemed to include and shall by virtue of this Act operate to convey, with the manor, all pastures, feedings, wastes, warrens, commons, mines, minerals, quarries, furzes, trees, woods, underwoods, coppices, and the ground and soil thereof, fishings, fisheries, fowlings, courts leet, courts baron, and other courts, view of frankpledge and all that to view of frankpledge doth belong, mills, mulctures, customs, tolls, duties, reliefs, heriots, fines, sums of money, amerciaments, waifs, estrays, chief-rents, quit-rents, rents-charge, rents-seck, rents of assize, fee farm rents, services, royalties, jurisdictions, franchises, liberties, privileges, easements, profits, advantages, rights, emoluments, and hereditaments whatsoever to the manor appertaining or reputed to appertain, or at the time of conveyance demised, occupied, or enjoyed with the same, or reputed or known as part, parcel or member thereof.

(4.) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained.

(5.) This section shall not be construed as giving to any person a better title to any property, right, or thing in this section mentioned than the title which the conveyance gives to him to the land or manor expressed to be conveyed, or as conveying to him any property, right, or thing in this section mentioned, further or otherwise than as the same could have been conveyed to him by the conveying parties.

(6.) This section applies only to conveyances made after the commencement of this Act.

Covenants for Title.

44 & 45 VICT. c. 41.

Covenants for title.

Covenants for title to be implied (*a*).

7.—(1.) In a conveyance there shall, in the several cases in this section mentioned, be deemed to be included, and there shall in those several cases, by virtue of this Act, be implied, a covenant to the effect in this section stated by the person, or by each person who conveys, as far as regards the subject-matter or share of subject-matter expressed to be conveyed by him, with the person, if one, to whom the conveyance is made, or with the persons jointly, if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is made as tenants in common, that is to say:

On conveyance for value, by beneficial owner.

(A.) In a conveyance for valuable consideration, other than a mortgage, the following covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

Right to convey.

That, notwithstanding anything by the person who so conveys, or any one through whom he derives title, otherwise than by purchase for value, made, done, executed, or omitted, or knowingly suffered, the person who so conveys, has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed, subject as, if so expressed, and in the manner in which it is expressed to be conveyed, and that, notwithstanding anything as aforesaid, that subject-matter shall remain to and be quietly entered upon, received, and held, occupied, enjoyed, and taken, by the person to whom the conveyance is expressed to be made, and any person deriving title under him, and the benefit thereof shall be received and taken accordingly, without any lawful interruption or disturbance by the person who so conveys or any person conveying by his direction, or rightfully claiming or to claim by, through, under, or in trust for the person who so conveys, or any person conveying by his direction, or by, through, or under any one not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made, through whom the person who so conveys derives title, otherwise than by purchase for value;

Quiet enjoyment.

Freedom from incumbrance.

and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all such estates, incumbrances, claims, and demands other than those subject to which the conveyance is expressly made, as either before or after the date of the conveyance have been or shall be made, occasioned, or suffered by that person or by any person

(*a*) See *supra*, pp. 27—30.

44 & 45 Vict. c. 41.

conveying by his direction, or by any person rightfully claiming by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, or by, through, or under any one through whom the person who so conveys derives title, otherwise than by purchase for value; and further, that the person who so conveys, and any person conveying by his direction, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, other than an estate or interest subject whereto the conveyance is expressly made, by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, or by, through, or under any one through whom the person who so conveys derives title, otherwise than by purchase for value, will, from time to time and at all times after the date of the conveyance, on the request and at the cost of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required:

Further assurance.

(in which covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage):

On conveyance of leaseholds for value by beneficial owner.

(B.) In a conveyance of leasehold property for valuable consideration, other than a mortgage, the following further covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

Validity of lease.

That, notwithstanding anything by the person who so conveys, or any one through whom he derives title otherwise than by purchase for value, made, done, executed, or omitted, or knowingly suffered, the lease or grant creating the term or estate for which the land is conveyed is, at the time of conveyance, a good, valid, and effectual lease or grant of the property conveyed, and is in full force, unforfeited, unsurrendered, and in nowise become void or voidable; and that, notwithstanding anything as aforesaid, all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed, and performed up to the time of conveyance:

(in which covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage): 44 & 45 Vict. c. 41.

(C.) In a conveyance by way of mortgage, the following covenant by a person who conveys and is expressed to convey as beneficial owner (namely): On mortgage by beneficial owner.

That the person who so conveys has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed by him, subject as, if so expressed, and in the manner in which it is expressed to be conveyed; and also that, if default is made in payment of the money intended to be secured by the conveyance, or any interest thereon, or any part of that money or interest, contrary to any provision in the conveyance, it shall be lawful for the person to whom the conveyance is expressed to be made, and the persons deriving title under him, to enter into and upon, or receive, and thenceforth quietly hold, occupy, and enjoy or take and have, the subject-matter expressed to be conveyed, or any part thereof, without any lawful interruption or disturbance by the person who so conveys, or any person conveying by his direction, or any other person not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made; and that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all estates, incumbrances, claims, and demands whatever, other than those subject whereto the conveyance is expressly made; and further, that the person who so conveys, and every person conveying by his direction, and every person deriving title under any of them, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, or any part thereof, other than an estate or interest subject whereto the conveyance is expressly made, will from time to time and at all times, on the request of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, but, as long as any right of redemption exists under the conveyance, at the cost of the person so conveying, or of those deriving title under him, and afterwards at the cost of the person making the request, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of conveyance and every part thereof to the person to whom the conveyance is made and to those deriving title under him, subject as, if so expressed, and in the manner in which the

Right to convey.

Quiet enjoyment.

Freedom from incumbrances.

Further assurance.

44 & 45 Vict. c. 41.

conveyance is expressed to be made, as by him or them or any of them shall be reasonably required:

On mortgage of leaseholds, by beneficial owner.

(D.) In a conveyance by way of mortgage of leasehold property, the following further covenant by a person who conveys and is expressed to convey as beneficial owner (namely):

Validity of lease.

That the lease or grant creating the term or estate for which the land is held is, at the time of conveyance, a good, valid, and effectual lease or grant of the land conveyed, and is in full force, unforfeited, and unsurrendered, and in nowise become void or voidable, and that all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed, and performed up to the time of conveyance; and also that the person so conveying, or the persons deriving title under him, will at all times, as long as any money remains on the security of the conveyance, pay, observe, and perform, or cause to be paid, observed, and performed all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, and will keep the person to whom the conveyance is made, and those deriving title under him, indemnified against all actions, proceedings, costs, charges, damages, claims, and demands, if any, to be incurred or sustained by him or them by reason of the non-payment of such rent or the non-observance or non-performance of such covenants, conditions, and agreements, or any of them:

Payment of rent and performance of covenants.

On settlement.

(E.) In a conveyance by way of settlement, the following covenant by a person who conveys and is expressed to convey as settlor (namely):

For further assurance limited.

That the person so conveying, and every person deriving title under him by deed or act or operation of law in his lifetime subsequent to that conveyance, or by testamentary disposition or devolution in law, on his death, will, from time to time, and at all times, after the date of that conveyance, at the request and cost of any person deriving title thereunder, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the persons to whom the conveyance is made and those deriving title under them, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by them or any of them shall be reasonably required:

44 & 45 Vict. c. 41.

On conveyance by trustee or mortgagee.

(F.) In any conveyance, the following covenant by every person who conveys and is expressed to convey as trustee or mortgagee, or as personal representative of a deceased person, or as committee of a lunatic so found by inquisition, or under an order of the Court, which covenant shall be deemed to extend to every such person's own acts only (namely):

Against incumbrances.

That the person so conveying has not executed or done, or knowingly suffered, or been party or privy to, any deed or thing, whereby or by means whereof the subject-matter of the conveyance, or any part thereof, is or may be impeached, charged, affected, or incumbered in title, estate, or otherwise, or whereby or by means whereof the person who so conveys is in anywise hindered from conveying the subject-matter of the conveyance, or any part thereof, in the manner in which it is expressed to be conveyed.

(2.) Where in a conveyance it is expressed that by direction of a person expressed to direct as beneficial owner another person conveys, then, within this section, the person giving the direction, whether he conveys and is expressed to convey as beneficial owner or not, shall be deemed to convey and to be expressed to convey as beneficial owner the subject-matter so conveyed by his direction; and a covenant on his part shall be implied accordingly.

(3.) Where a wife conveys and is expressed to convey as beneficial owner, and the husband also conveys and is expressed to convey as beneficial owner, then, within this section, the wife shall be deemed to convey and to be expressed to convey by direction of the husband, as beneficial owner; and, in addition to the covenant implied on the part of the wife, there shall also be implied, first, a covenant on the part of the husband as the person giving that direction, and secondly, a covenant on the part of the husband in the same terms as the covenant implied on the part of the wife.

(4.) Where in a conveyance a person conveying is not expressed to convey as beneficial owner, or as settlor, or as trustee, or as mortgagee, or as personal representative of a deceased person, or as committee of a lunatic so found by inquisition, or under an order of the Court, or by direction of a person as beneficial owner, no covenant on the part of the person conveying shall be, by virtue of this section, implied in the conveyance.

(5.) In this section a conveyance includes a deed conferring the right to admittance to copyhold or customary land, but does not include a demise by way of lease at a rent, or any customary assurance, other than a deed, conferring the right to admittance to copyhold or customary land.

44 & 45 Vict. c. 41.

(6.) The benefit of a covenant implied as aforesaid shall be annexed and incident to, and shall go with, the estate or interest of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is, for the whole or any part thereof, from time to time vested.

(7.) A covenant implied as aforesaid may be varied or extended by deed, and, as so varied or extended, shall, as far as may be, operate in the like manner, and with all the like incidents, effects, and consequences, as if such variations or extensions were directed in this section to be implied.

(8.) This section applies only to conveyances made after the commencement of this Act.

Execution of purchase deed.

Execution of Purchase Deed.

Rights of purchaser as to execution (*a*).

8.—(1.) On a sale, the purchaser shall not be entitled to require that the conveyance to him be executed in his presence, or in that of his solicitor, as such; but shall be entitled to have, at his own cost, the execution of the conveyance attested by some person appointed by him, who may, if he thinks fit, be his solicitor.

(2.) This section applies only to sales made after the commencement of this Act.

Production and safe custody of title deeds.

Production and Safe Custody of Title Deeds.

Acknowledgment of right to production, and undertaking for safe custody of documents (*b*).

9.—(1.) Where a person retains possession of documents, and gives to another an acknowledgment in writing of the right of that other to production of those documents, and to delivery of copies thereof (in this section called an acknowledgment), that acknowledgment shall have effect as in this section provided.

(2.) An acknowledgment shall bind the documents to which it relates in the possession or under the control of the person who retains them, and in the possession or under the control of every other person having possession or control thereof from time to time, but shall bind each individual possessor or person as long only as he has possession or control thereof; and every person so having possession or control from time to time shall be bound specifically to perform the obligations imposed under this section by an acknowledgment, unless prevented from doing so by fire or other inevitable accident.

(*a*) See *supra*, p. 30.

(*b*) See *supra*, pp. 30—32.

(3.) The obligations imposed under this section by an acknowledgment are to be performed from time to time at the request in writing of the person to whom an acknowledgment is given, or of any person, not being a lessee at a rent, having or claiming any estate, interest, or right through or under that person, or otherwise becoming through or under that person interested in or affected by the terms of any document to which the acknowledgment relates. 44 & 45 Vict. c. 41.

(4.) The obligations imposed under this section by an acknowledgment are—

(i.) An obligation to produce the documents or any of them at all reasonable times for the purpose of inspection, and of comparison with abstracts or copies thereof, by the person entitled to request production, or by any one by him authorised in writing; and

(ii.) An obligation to produce the documents or any of them at any trial, hearing, or examination in any Court, or in the execution of any commission, or elsewhere in the United Kingdom, on any occasion on which production may properly be required, for proving or supporting the title or claim of the person entitled to request production, or for any other purpose relative to that title or claim; and

(iii.) An obligation to deliver to the person entitled to request the same true copies or extracts, attested or unattested, of or from the documents or any of them.

(5.) All costs and expenses of or incidental to the specific performance of any obligation imposed under this section by an acknowledgment shall be paid by the person requesting performance.

(6.) An acknowledgment shall not confer any right to damages for loss or destruction of, or injury to, the documents to which it relates, from whatever cause arising.

(7.) Any person claiming to be entitled to the benefit of an acknowledgment may apply to the Court for an order directing the production of the documents to which it relates, or any of them, or the delivery of copies of or extracts from those documents, or any of them, to him, or some person on his behalf: and the Court may, if it thinks fit, order production, or production and delivery, accordingly, and may give directions respecting the time, place, terms, and mode of production or delivery, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

44 & 45 Vict. c. 41.

(8.) An acknowledgment shall by virtue of this Act satisfy any liability to give a covenant for production and delivery of copies of or extracts from documents.

(9.) Where a person retains possession of documents and gives to another an undertaking in writing for safe custody thereof, that undertaking shall impose on the person giving it, and on every person having possession or control of the documents from time to time, but on each individual possessor or person as long only as he has possession or control thereof, an obligation to keep the documents safe, whole, uncancelled, and undefaced, unless prevented from so doing by fire or other inevitable accident.

(10.) Any person claiming to be entitled to the benefit of such an undertaking may apply to the Court to assess damages for any loss, destruction of, or injury to the documents or any of them, and the Court may, if it thinks fit, direct an inquiry respecting the amount of damages, and order payment thereof by the person liable, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

(11.) An undertaking for safe custody of documents shall by virtue of this Act satisfy any liability to give a covenant for safe custody of documents.

(12.) The rights conferred by an acknowledgment or an undertaking under this section shall be in addition to all such other rights relative to the production, or inspection, or the obtaining of copies of documents as are not, by virtue of this Act, satisfied by the giving of the acknowledgment or undertaking, and shall have effect subject to the terms of the acknowledgment or undertaking, and to any provisions therein contained.

(13.) This section applies only if and as far as a contrary intention is not expressed in the acknowledgment or undertaking.

(14.) This section applies only to an acknowledgment or undertaking given, or a liability respecting documents incurred, after the commencement of this Act.

LEASES.

III.—Leases.

Rent and benefit of lessee's covenants to run with reversion (*a*).

10.—(1.) Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained, shall be annexed and incident to and shall go with the reversionary estate in the land, or in any part thereof,

(*a*) See *supra*, p. 32.

immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and shall be capable of being recovered, received, enforced, and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased.

(2.) This section applies only to leases made after the commencement of this Act.

Obligation of lessor's covenants to run with reversion (*a*).

11.—(1.) The obligation of a covenant entered into by a lessor with reference to the subject-matter of the lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law, or otherwise; and, if and as far as the lessor has power to bind the person from time to time entitled to that reversionary estate, the obligation aforesaid may be taken advantage of and enforced against any person so entitled.

(2.) This section applies only to leases made after the commencement of this Act.

Apportionment of conditions on severance, &c. (*a*).

12.—(1.) Notwithstanding the severance by conveyance, surrender, or otherwise, of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition, contained in the lease, shall be apportioned, and shall remain annexed to the several parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in any land which has not been surrendered, or as to which the term has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease.

(2.) This section applies only to leases made after the commencement of this Act.

On sub-demise, title to leasehold reversion not to be required (*b*).

13.—(1.) On a contract to grant a lease for a term of years to be derived out of a leasehold interest, with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion.

(*a*) See *supra*, pp. 33, 34.
(*b*) See *supra*, p. 34.

44 & 45 Vict. c. 41.

(2.) This section applies only if and as far as a contrary intention is not expressed in the contract, and shall have effect subject to the terms of the contract and to the provisions therein contained.

(3.) This section applies only to contracts made after the commencement of this Act.

Forfeiture.

Restrictions on and relief against forfeiture of leases (*a*).

Forfeiture.

14.—(1.) A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant or condition in the lease, shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach complained of and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.

(2.) Where a lessor is proceeding, by action or otherwise, to enforce such a right of re-entry or forfeiture, the lessee may, in the lessor's action, if any, or in any action brought by himself, apply to the Court for relief; and the Court may grant or refuse relief, as the Court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, think fit; and in case of relief may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the Court, in the circumstances of each case, thinks fit.

(3.) For the purposes of this section a lease includes an original or derivative underlease, also a grant at a fee farm rent, or securing a rent by condition; and a lessee includes an original or derivative under-lessee, and the heirs, executors, administrators, and assigns of a lessee, also a grantee under such a grant as aforesaid, his heirs and assigns; and a lessor includes an original or derivative under-lessor, and the heirs, executors, administrators, and assigns of a lessor, also a grantor as aforesaid, and his heirs and assigns.

(4.) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any Act of Parliament.

(*b*) See *supra*, pp. 35—38, and Conv. Act, 1892 (App. VI., *infra*), ss. 2—5.

(5.) For the purposes of this section a lease limited to continue as long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach. 44 & 45 Vict. c. 41.

(6.) This section does not extend—

(i.) To a covenant or condition against the assigning, underletting, parting with the possession, or disposing of the land leased; or to a condition for forfeiture on the bankruptcy of the lessee, or on the taking in execution of the lessee's interest; or

(ii.) In case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing machines, or other things, or to enter or inspect the mine or the workings thereof.

(7.) *The enactments described in Part I. of the Second Schedule to this Act are hereby repealed.*

(8.) This section shall not affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent.

(9.) This section applies to leases made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

IV.—Mortgages.

MORTGAGES.

Obligation on mortgagee to transfer instead of reconveying (*a*).

15.—(1.) Where a mortgagor is entitled to redeem, he shall, by virtue of this Act, have power to require the mortgagee, instead of reconveying, and on the terms on which he would be bound to reconvey, to assign the mortgage debt and convey the mortgaged property to any third person, as the mortgagor directs; and the mortgagee shall, by virtue of this Act, be bound to assign and convey accordingly.

(2.) This section does not apply in the case of a mortgagee being or having been in possession.

(3.) This section applies to mortgages made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

Power for mortgagor to inspect title deeds (*b*).

16.—(1.) A mortgagor, as long as his right to redeem subsists, shall, by virtue of this Act, be entitled from time to time, at reasonable times, on his request, and at his own cost, and on payment of

(*a*) See *supra*, pp. 39, 40. The scope of this section is, as there noticed, extended by sect. 12 of the Conv. Act, 1882 (App. V., *infra*).

(*b*) See *supra*, p. 40.

44 & 45 Vict. c. 41.

the mortgagee's costs and expenses in this behalf, to inspect and make copies or abstracts of or extracts from the documents of title relating to the mortgaged property in the custody or power of the mortgagee.

(2.) This section applies only to mortgages made after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

Restriction on consolidation of mortgages (*a*).

17.—(1.) A mortgagor seeking to redeem any one mortgage, shall, by virtue of this Act, be entitled to do so, without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem.

(2.) This section applies only if and as far as a contrary intention is not expressed in the mortgage deeds or one of them.

(3.) This section applies only where the mortgages or one of them are or is made after the commencement of this Act.

Leases.

Leases.

Leasing powers of mortgagor and of mortgagee in possession (*b*).

18.—(1.) A mortgagor of land while in possession shall, as against every incumbrancer, have, by virtue of this Act, power to make from time to time any such lease of the mortgaged land, or any part thereof, as is in this section described and authorised.

(2.) A mortgagee of land while in possession shall, as against all prior incumbrancers, if any, and as against the mortgagor, have, by virtue of this Act, power to make from time to time any such lease as aforesaid.

(3.) The leases which this section authorises are—

(i.) An agricultural or occupation lease for any term not exceeding twenty-one years; and

(ii.) A building lease for any term not exceeding ninety-nine years.

(4.) Every person making a lease under this section may execute and do all assurances and things necessary or proper in that behalf.

(5.) Every such lease shall be made to take effect in possession not later than twelve months after its date.

(6.) Every such lease shall reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without any fine being taken.

(7.) Every such lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified, not exceeding thirty days.

(*a*) See *supra*, p. 40.
(*b*) See *supra*, p. 42.

(8.) A counterpart of every such lease shall be executed by the lessee and delivered to the lessor, of which execution and delivery the execution of the lease by the lessor shall, in favour of the lessee and all persons deriving title under him, be sufficient evidence.

(9.) Every such building lease shall be made in consideration of the lessee, or some person by whose direction the lease is granted, having erected, or agreeing to erect within not more than five years from the date of the lease, buildings, new or additional, or having improved or repaired buildings, or agreeing to improve or repair buildings, within that time, or having executed, or agreeing to execute, within that time, on the land leased, an improvement for or in connexion with building purposes.

(10.) In any such building lease a peppercorn rent, or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years, or any less part of the term.

(11.) In the case of a lease by the mortgagor, he shall, within one month after making the lease, deliver to the mortgagee, or, where there are more than one, to the mortgagee first in priority, a counterpart of the lease duly executed by the lessee; but the lessee shall not be concerned to see that this provision is complied with.

(12.) A contract to make or accept a lease under this section may be enforced by or against every person on whom the lease if granted would be binding.

(13.) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and shall have effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.

(14.) Nothing in this Act shall prevent the mortgage deed from reserving to or conferring on the mortgagor or the mortgagee, or both, any further or other powers of leasing or having reference to leasing; and any further or other powers so reserved or conferred shall be exercisable, as far as may be, as if they were conferred by this Act, and with all the like incidents, effects, and consequences, unless a contrary intention is expressed in the mortgage deed.

(15.) Nothing in this Act shall be construed to enable a mortgagor or mortgagee to make a lease for any longer term or on any other conditions than such as could have been granted or imposed by the mortgagor, with the concurrence of all the incumbrancers, if this Act had not been passed.

(16.) This section applies only in case of a mortgage made after the commencement of this Act; but the provisions thereof, or any of them may, by agreement in writing made after the commencement of this Act, between mortgagor and mortgagee, be applied to

44 & 45 Vict. c. 41.

a mortgage made before the commencement of this Act, so, nevertheless, that any such agreement shall not prejudicially affect any right or interest of any mortgagee not joining in or adopting the agreement.

(17.) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.

Sale; Insurance; Receiver; Timber.

Sale; Insurance; Receiver; Timber.

Powers incident to estate or interest of mortgagee (*a*).

19.—(1.) A mortgagee, where the mortgage is made by deed, shall, by virtue of this Act, have the following powers, to the like extent as if they had been in terms conferred by the mortgage deed, but not further (namely):

(i.) A power, when the mortgage money has become due, to sell, or to concur with any other person in selling, the mortgaged property, or any part thereof, either subject to prior charges, or not, and either together or in lots, by public auction or by private contract, subject to such conditions respecting title, or evidence of title, or other matter, as he (the mortgagee) thinks fit, with power to vary any contract for sale, and to buy in at an auction, or to rescind any contract for sale, and to re-sell, without being answerable for any loss occasioned thereby; and

(ii.) A power, at any time after the date of the mortgage deed, to insure and keep insured against loss or damage by fire any building, or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the mortgaged property, and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the mortgage money, and with the same priority, and with interest at the same rate, as the mortgage money; and

(iii.) A power, when the mortgage money has become due, to appoint a receiver of the income of the mortgaged property, or of any part thereof; and

(iv.) A power, while the mortgagee is in possession, to cut and sell timber and other trees ripe for cutting, and not planted or left standing for shelter or ornament, or to contract for any such cutting and sale, to be completed within any time not exceeding twelve months from the making of the contract.

(*a*) See *supra*, pp. 44—49.

(2.) The provisions of this Act relating to the foregoing powers, comprised either in this section, or in any subsequent section regulating the exercise of those powers, may be varied or extended by the mortgage deed, and, as so varied or extended, shall, as far as may be, operate in the like manner and with all the like incidents, effects, and consequences, as if such variations or extensions were contained in this Act. 44 & 45 Vict. c. 41.

(3.) This section applies only if and as far as a contrary intention is not expressed in the mortgage deed, and shall have effect subject to the terms of the mortgage deed and to the provisions therein contained.

(4.) This section applies only where the mortgage deed is executed after the commencement of this Act.

20. A mortgagee shall not exercise the power of sale conferred by this Act unless and until— Regulation of exercise of power of sale.

(i.) Notice requiring payment of the mortgage money has been served on the mortgagor or one of the several mortgagors, and default has been made in payment of the mortgage money, or of part thereof, for three months after such service; or

(ii.) Some interest under the mortgage is in arrear and unpaid for two months after becoming due; or

(iii.) There has been a breach of some provision contained in the mortgage deed or in this Act, and on the part of the mortgagor, or of some person concurring in making the mortgage, to be observed or performed, other than and besides a covenant for payment of the mortgage money or interest thereon.

21.—(1.) A mortgagee exercising the power of sale conferred by this Act shall have power, by deed, to convey the property sold, for such estate and interest therein as is the subject of the mortgage, freed from all estates, interests, and rights to which the mortgage has priority, but subject to all estates, interests, and rights which have priority to the mortgage; except that, in the case of copyhold or customary land, the legal right to admittance shall not pass by a deed under this section, unless the deed is sufficient otherwise by law, or is sufficient by custom, in that behalf. Conveyance, receipt, &c., on sale.

(2.) Where a conveyance is made in professed exercise of the power of sale conferred by this Act, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorised or improper or irregular

44 & 45 Vict. c. 41.

exercise of the power shall have his remedy in damages against the person exercising the power.

(3.) The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances to which the sale is not made subject, if any, or after payment into Court under this Act of a sum to meet any prior incumbrance, shall be held by him in trust to be applied by him, first, in payment of all costs, charges, and expenses, properly incurred by him, as incident to the sale, or any attempted sale, or otherwise; and secondly, in discharge of the mortgage money, interest, and costs, and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof.

(4.) The power of sale conferred by this Act may be exercised by any person for the time being entitled to receive and give a discharge for the mortgage money.

(5.) The power of sale conferred by this Act shall not affect the right of foreclosure.

(6.) The mortgagee, his executors, administrators, or assigns, shall not be answerable for any involuntary loss happening in or about the exercise or execution of the power of sale conferred by this Act or of any trust connected therewith.

(7.) At any time after the power of sale conferred by this Act has become exerciseable, the person entitled to exercise the same may demand and recover from any person, other than a person having in the mortgaged property an estate, interest, or right in priority to the mortgage, all the deeds and documents relating to the property, or to the title thereto, which a purchaser under the power of sale would be entitled to demand and recover from him.

Mortgagee's receipts, discharges, &c.

22.—(1.) The receipt in writing of a mortgagee shall be a sufficient discharge for any money arising under the power of sale conferred by this Act, or for any money or securities comprised in his mortgage, or arising thereunder; and a person paying or transferring the same to the mortgagee shall not be concerned to inquire whether any money remains due under the mortgage.

(2.) Money received by a mortgagee under his mortgage or from the proceeds of securities comprised in his mortgage shall be applied in like manner as in this Act directed respecting money received by him arising from a sale under the power of sale conferred by this Act; but with this variation, that the costs, charges, and expenses payable shall include the costs, charges, and expenses properly incurred of recovering and receiving the money or securities, and of conversion of securities into money instead of those incident to sale.

44 & 45 Vict. c. 41.

Amount and application of insurance money.

23.—(1.) The amount of an insurance effected by a mortgagee against loss or damage by fire under the power in that behalf conferred by this Act shall not exceed the amount specified in the mortgage deed, or, if no amount is therein specified, then shall not exceed two-third parts of the amount that would be required, in case of total destruction, to restore the property insured.

(2.) An insurance shall not, under the power conferred by this Act, be effected by a mortgagee in any of the following cases (namely):

(i.) Where there is a declaration in the mortgage deed that no insurance is required:

(ii.) Where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage deed:

(iii.) Where the mortgage deed contains no stipulation respecting insurance, and an insurance is kept up by or on behalf of the mortgagor, to the amount in which the mortgagee is by this Act authorised to insure.

(3.) All money received on an insurance effected under the mortgage deed or under this Act shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.

(4.) Without prejudice to any obligation to the contrary imposed by law, or by special contract, a mortgagee may require that all money received on an insurance be applied in or towards discharge of the money due under his mortgage.

Appointment, powers, remuneration and duties of receiver.

24.—(1.) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by this Act shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this Act, but may then, by writing under his hand, appoint such person as he thinks fit to be receiver.

(2.) The receiver shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults, unless the mortgage deed otherwise provides.

(3.) The receiver shall have power to demand and recover all the income of the property of which he is appointed receiver, by action, distress, or otherwise, in the name either of the mortgagor or of the mortgagee, to the full extent of the estate or interest which the mortgagor could dispose of, and to give effectual receipts, accordingly, for the same.

(4.) A person paying money to the receiver shall not be concerned to inquire whether any case has happened to authorise the receiver to act.

(5.) The receiver may be removed and a new receiver may be

44 & 45 Vict. c. 41.

appointed, from time to time, by the mortgagee by writing under his hand.

(6.) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges, and expenses incurred by him as receiver, a commission at such rate, not exceeding five per centum on the gross amount of all money received, as is specified in his appointment, and if no rate is so specified, then at the rate of five per centum on that gross amount, or at such higher rate as the Court thinks fit to allow, on application made by him for that purpose.

(7.) The receiver shall, if so directed in writing by the mortgagee, insure and keep insured against loss or damage by fire, out of the money received by him, any building, effects, or property comprised in the mortgage, whether affixed to the freehold or not, being of an insurable nature.

(8.) The receiver shall apply all money received by him as follows (namely):

(i.) In discharge of all rents, taxes, rates and outgoings whatever affecting the mortgaged property; and

(ii.) In keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver; and

(iii.) In payment of his commission, and of the premiums on fire, life, or other insurances, if any, properly payable under the mortgage deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee; and

(iv.) In payment of the interest accruing due in respect of any principal money due under the mortgage;

and shall pay the residue of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of the mortgaged property, or who is otherwise entitled to that property.

Action respecting mortgage.

Sale of mortgaged property in action for foreclosure, &c. (*a*).

Action respecting Mortgage.

25.—(1.) Any person entitled to redeem mortgaged property may have a judgment or order for sale instead of for redemption in an action brought by him either for redemption alone, or for sale alone, or for sale or redemption in the alternative.

(2.) In any action, whether for foreclosure, or for redemption, or for sale, or for the raising and payment in any manner of mortgage

(*a*) See *supra*, p. 49.

money, the Court, on the request of the mortgagee, or of any person interested either in the mortgage money or in the right of redemption, and, notwithstanding the dissent of any other person, and notwithstanding that the mortgagee or any person so interested does not appear in the action, and without allowing any time for redemption or for payment of any mortgage money, may, if it thinks fit, direct a sale of the mortgaged property, on such terms as it thinks fit, including, if it thinks fit, the deposit in Court of a reasonable sum fixed by the Court, to meet the expenses of sale and to secure performance of the terms. 44 & 45 Vict. c. 41.

(3.) But, in an action brought by a person interested in the right of redemption and seeking a sale, the Court may, on the application of any defendant, direct the plaintiff to give such security for costs as the Court thinks fit, and may give the conduct of the sale to any defendant, and may give such directions as it thinks fit respecting the costs of the defendants or any of them.

(4.) In any case within this section the Court may, if it thinks fit, direct a sale without previously determining the priorities of incumbrancers.

(5.) This section applies to actions brought either before or after the commencement of this Act.

(6.) *The enactment described in Part II. of the Second Schedule to this Act is hereby repealed.* 15 & 16 Vict. c. 86, s. 48.

(7.) This section does not extend to Ireland.

V.—Statutory Mortgage (*a*).

STATUTORY MORTGAGE.

26.—(1.) A mortgage of freehold or leasehold land may be made by a deed expressed to be made by way of statutory mortgage, being in the form given in Part I. of the Third Schedule to this Act, with such variations and additions, if any, as circumstances may require, and the provisions of this section shall apply thereto. Form of statutory mortgage in schedule.

(2.) There shall be deemed to be included, and there shall by virtue of this Act be implied, in the mortgage deed—

First, a covenant with the mortgagee by the person expressed therein to convey as mortgagor to the effect following (namely):

That the mortgagor will, on the stated day, pay to the mortgagee the stated mortgage money, with interest thereon in the meantime at the stated rate, and will thereafter, if and as long as the mortgage money or any part thereof remains unpaid, pay to the mortgagee interest thereon, or on the unpaid part thereof, at the stated rate, by equal half-yearly

(*a*) See *supra*, p. 50.

44 & 45 VICT. c. 41.

payments, the first thereof to be made at the end of six calendar months from the day stated for payment of the mortgage money:

Secondly, a proviso to the effect following (namely):

That if the mortgagor, on the stated day, pays to the mortgagee the stated mortgage money, with interest thereon in the meantime, at the stated rate, the mortgagee at any time thereafter, at the request and cost of the mortgagor, shall reconvey the mortgaged property to the mortgagor, or as he shall direct.

Forms of statutory transfer of mortgage in schedule.

27.—(1.) A transfer of a statutory mortgage may be made by a deed expressed to be made by way of statutory transfer of mortgage, being in such one of the three forms (A.) and (B.) and (C.) given in Part II. of the Third Schedule to this Act as may be appropriate to the case, with such variations and additions, if any, as circumstances may require, and the provisions of this section shall apply thereto.

(2.) In whichever of those three forms the deed of transfer is made, it shall have effect as follows (namely):

(i.) There shall become vested in the person to whom the benefit of the mortgage is expressed to be transferred, who, with his executors, administrators, and assigns, is hereafter in this section designated the transferee, the right to demand, sue for, recover and give receipts for the mortgage money, or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon, and the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee:

(ii.) All the estate and interest, subject to redemption, of the mortgagee in the mortgaged land shall vest in the transferee, subject to redemption.

(3.) If the deed of transfer is made in the form (B.), there shall also be deemed to be included, and there shall by virtue of this Act be implied therein, a covenant with the transferee by the person expressed to join therein as covenantor to the effect following (namely):

That the covenantor will, on the next of the days by the mortgage deed fixed for payment of interest, pay to the transferee the stated mortgage money, or so much thereof as then remains unpaid, with interest thereon, or on the unpaid part thereof, in the meantime, at the rate stated in the mortgage deed; and will thereafter, as long as the mortgage money, or any part thereof, remains unpaid, pay to the transferee interest on that

sum, or the unpaid part thereof, at the same rate, on the successive days by the mortgage deed fixed for payment of interest. 44 & 45 Vict. c. 41.

(4.) If the deed of transfer is made in the form (C.) it shall, by virtue of this Act, operate not only as a statutory transfer of mortgage, but also as a statutory mortgage, and the provisions of this section shall have effect in relation thereto, accordingly; but it shall not be liable to any increased stamp duty by reason only of it being designated a mortgage.

Implied covenants, joint and several.

28. In a deed of statutory mortgage, or of statutory transfer of mortgage, where more persons than one are expressed to convey as mortgagors, or to join as covenantors, the implied covenant on their part shall be deemed to be a joint and several covenant by them; and where there are more mortgagees or more transferees than one, the implied covenant with them shall be deemed to be a covenant with them jointly, unless the amount secured is expressed to be secured to them in shares or distinct sums, in which latter case the implied covenant with them shall be deemed to be a covenant with each severally in respect of the share or distinct sum secured to him.

Form of reconveyance of statutory mortgage in schedule (*a*).

29. A reconveyance of a statutory mortgage may be made by a deed expressed to be made by way of statutory reconveyance of mortgage, being in the form given in Part III. of the Third Schedule to this Act, with such variations and additions, if any, as circumstances may require.

VI.—Trust and Mortgage Estates on Death.

TRUST AND MORTGAGE ESTATES ON DEATH.

Devolution of trust and mortgage estates on death (*b*).

30.—(1.) Where an estate or interest of inheritance, or limited to the heir as special occupant, in any tenements or hereditaments, corporeal or incorporeal, is vested on any trust, or by way of mortgage, in any person solely, the same shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time, in like manner as if the same were a chattel real vesting in them or him; and accordingly all the like powers, for one only of several joint personal representatives, as well as for a single personal representative, and for all the personal representatives together, to dispose of and otherwise deal with the same, shall belong to the deceased's personal representatives or representative from time to time, with all the like incidents, but subject to all the like rights, equities and obligations, as if the same were a chattel real vesting

(*a*) See *supra*, p. 50.
(*b*) See *supra*, pp. 51—54.

44 & 45 Vict. c. 41.

in them or him; and, for the purposes of this section, the personal representatives, for the time being, of the deceased, shall be deemed in law his heirs and assigns, within the meaning of all trusts and powers.

37 & 38 Vict. c. 78.

(2.) *Section four of the Vendor and Purchaser Act*, 1874, *and section forty-eight of the Land Transfer Act*, 1875, *are hereby repealed.*

38 & 39 Vict. c. 87.

(3.) This section, *including the repeals therein*, applies only in cases of death after the commencement of this Act.

TRUSTEES AND EXECUTORS.

VII.—Trustees and Executors.

[*Part VII., comprising sections* 31 *to* 38 (*both inclusive*) *is repealed and re-enacted, with slight alterations, in the Trustee Act*, 1893 (*App. XV., infra*). *Sections* 31, 32, *and* 34 *of this Act are replaced by sections* 10, 11, *and* 12 *of the Act of* 1893; *section* 33 *by section* 37; *section* 35 *by section* 13; *and sections* 36, 37, *and* 38 *by sections* 20, 21, *and* 22.]

MARRIED WOMEN.

VIII.—Married Women.

Power for Court to bind interest of married woman (*a*).

39.—(1.) Notwithstanding that a married woman is restrained from anticipation, the Court may, if it thinks fit, where it appears to the Court to be for her benefit, by judgment or order, with her consent, bind her interest in any property.

(2.) This section applies only to judgments or orders made after the commencement of this Act.

Power of attorney of married woman (*b*).

40.—(1.) A married woman, whether an infant or not, shall by virtue of this Act have power, as if she were unmarried and of full age, by deed, to appoint an attorney on her behalf for the purpose of executing any deed or doing any other act which she might herself execute or do; and the provisions of this Act relating to instruments creating powers of attorney shall apply thereto.

(2.) This section applies only to deeds executed after the commencement of this Act.

INFANTS.

IX.—Infants.

Sales and leases on behalf of infant owner (*c*).

40 & 41 Vict. c. 18.

41. Where a person in his own right seised of or entitled to land for an estate in fee simple, or for any leasehold interest at a rent, is an infant, the land shall be deemed to be a settled estate within the Settled Estates Act, 1877.

(*a*) See *supra*, pp. 54—56.
(*b*) See *supra*, p. 58.
(*c*) See *supra*, p. 59.

44 & 45 Vict. c. 41.

Management of land and receipt and application of income during minority (*a*).

42.—(1.) If and so long as any person who would but for this section be beneficially entitled to the possession of any land is an infant, and being a woman is also unmarried, the trustees appointed for this purpose by the settlement, if any, or if there are none so appointed, then the persons, if any, who are for the time being under the settlement trustees with power of sale of the settled land, or of part thereof, or with power of consent to or approval of the exercise of such a power of sale, or if there are none, then any persons appointed as trustees for this purpose by the Court, on the application of a guardian or next friend of the infant, may enter into and continue in possession of the land; and in every such case the subsequent provisions of this section shall apply.

(2.) The trustees shall manage or superintend the management of the land, with full power to fell timber or cut underwood from time to time in the usual course for sale or for repairs or otherwise, and to erect, pull down, rebuild, and repair houses, and other buildings and erections, and to continue the working of mines, minerals, and quarries which have usually been worked, and to drain or otherwise improve the land or any part thereof, and to insure against loss by fire, and to make allowances to and arrangements with tenants and others, and to determine tenancies, and to accept surrenders of leases and tenancies, and generally to deal with the land in a proper and due course of management; but so that, where the infant is impeachable for waste, the trustees shall not commit waste, and shall cut timber on the same terms only, and subject to the same restrictions, on and subject to which the infant could, if of full age, cut the same.

(3.) The trustees may from time to time, out of the income of the land, including the produce of the sale of timber and underwood, pay the expenses incurred in the management, or in the exercise of any power conferred by this section, or otherwise in relation to the land, and all outgoings not payable by any tenant or other person, and shall keep down any annual sum, and the interest of any principal sum, charged on the land.

(4.) The trustees may apply at discretion any income which, in the exercise of such discretion, they deem proper, according to the infant's age, for his or her maintenance, education, or benefit, or pay thereout any money to the infant's parent or guardian, to be applied for the same purposes.

(5.) The trustees shall lay out the residue of the income of the land in investment on securities on which they are by the settlement, if any, or by law, authorised to invest trust money, with

(*a*) See *supra*, pp. 59—61.

44 & 45 Vict. c. 41.

power to vary investments; and shall accumulate the income of the investments so made in the way of compound interest, by from time to time similarly investing such income and the resulting income of investments; and shall stand possessed of the accumulated fund arising from income of the land and from investments of income on the trusts following (namely):

(i.) If the infant attains the age of twenty-one years, then in trust for the infant:

(ii.) If the infant is a woman and marries while an infant, then in trust for her separate use, independently of her husband, and so that her receipt after she marries, and though still an infant, shall be a good discharge; but

(iii.) If the infant dies while an infant, and being a woman without having been married, then, where the infant was, under a settlement, tenant for life, or by purchase tenant in tail or tail male or tail female, on the trusts, if any, declared of the accumulated fund by that settlement; but where no such trusts are declared, or the infant has taken the land from which the accumulated fund is derived by descent, and not by purchase, or the infant is tenant for an estate in fee simple, absolute, or determinable, then in trust for the infant's personal representatives, as part of the infant's personal estate:

but the accumulations, or any part thereof, may at any time be applied as if the same were income arising in the then current year.

(6.) Where the infant's estate or interest is in an undivided share of land, the powers of this section relative to the land may be exercised jointly with persons entitled to possession of, or having power to act in relation to, the other undivided share or shares.

(7.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(8.) This section applies only where that instrument comes into operation after the commencement of this Act.

Application by trustees of income of property of infant for maintenance, &c. (*a*).

43.—(1.) Where any property is held by trustees in trust for an infant, either for life, or for any greater interest, and whether absolutely, or contingently on his attaining the age of twenty-one years, or on the occurrence of any event before his attaining that age, the trustees may, at their sole discretion, pay to the infant's parent or guardian, if any, or otherwise apply for or towards the infant's maintenance, education, or benefit, the income of that property, or

(*a*) See *supra*, pp. 61, 62.

any part thereof, whether there is any other fund applicable to the same purpose, or any person bound by law to provide for the infant's maintenance or education, or not. 44 & 45 Vict. c. 41.

(2.) The trustees shall accumulate all the residue of that income in the way of compound interest, by investing the same and the resulting income thereof from time to time on securities on which they are by the settlement, if any, or by law, authorised to invest trust money, and shall hold those accumulations for the benefit of the person who ultimately becomes entitled to the property from which the same arise; but so that the trustees may at any time, if they think fit, apply those accumulations or any part thereof, as if the same were income arising in the then current year.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4.) This section applies whether that instrument comes into operation before or after the commencement of this Act.

X.—Rentcharges and other Annual Sums.

RENTCHARGES AND OTHER ANNUAL SUMS.

Remedies for recovery of annual sums charged on land (*a*).

44.—(1.) Where a person is entitled to receive out of any land, or out of the income of any land, any annual sum, payable half-yearly or otherwise, whether charged on the land or on the income of the land, and whether by way of rentcharge or otherwise, not being rent incident to a reversion, then, subject and without prejudice to all estates, interests, and rights having priority to the annual sum, the person entitled to receive the same shall have such remedies for recovering and compelling payment of the same as are described in this section, as far as those remedies might have been conferred by the instrument under which the annual sum arises, but not further.

(2.) If at any time the annual sum or any part thereof is unpaid for twenty-one days next after the time appointed for any payment in respect thereof, the person entitled to receive the annual sum may enter into and distrain on the land charged or any part thereof, and dispose according to law of any distress found, to the intent that thereby or otherwise the annual sum and all arrears thereof, and all costs and expenses occasioned by non-payment thereof, may be fully paid.

(3.) If at any time the annual sum or any part thereof is unpaid for forty days next after the time appointed for any payment in

(*a*) See *supra*, pp. 62, 63.

44 & 45 Vict. c. 41.

respect thereof, then, although no legal demand has been made for payment thereof, the person entitled to receive the annual sum may enter into possession of and hold the land charged or any part thereof, and take the income thereof, until thereby or otherwise the annual sum and all arrears thereof due at the time of his entry, or afterwards becoming due during his continuance in possession, and all costs and expenses occasioned by non-payment of the annual sum, are fully paid; and such possession when taken shall be without impeachment of waste.

(4.) In the like case the person entitled to the annual charge, whether taking possession or not, may also by deed demise the land charged, or any part thereof, to a trustee for a term of years, with or without impeachment of waste, on trust, by mortgage, or sale, or demise, for all or any part of the term, of the land charged, or of any part thereof, or by receipt of the income thereof, or by all or any of those means, or by any other reasonable means, to raise and pay the annual sum and all arrears thereof due or to become due, and all costs and expenses occasioned by non-payment of the annual sum, or incurred in compelling or obtaining payment thereof, or otherwise relating thereto, including the costs of the preparation and execution of the deed of demise, and the costs of the execution of the trusts of that deed; and the surplus, if any, of the money raised, or of the income received, under the trusts of that deed shall be paid to the person for the time being entitled to the land therein comprised in reversion immediately expectant on the term thereby created.

(5.) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the annual sum arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(6.) This section applies only where that instrument comes into operation after the commencement of this Act.

Redemption of quit-rents and other perpetual charges (*a*).

45.—(1.) Where there is a quit-rent, chief-rent, rentcharge, or other annual sum issuing out of land (in this section referred to as the rent), the Copyhold Commissioners shall at any time, on the requisition of the owner of the land or of any person interested therein, certify the amount of money in consideration whereof the rent may be redeemed.

(2.) Where the person entitled to the rent is absolutely entitled thereto in fee simple in possession, or is empowered to dispose thereof absolutely, or to give an absolute discharge for the capital value thereof, the owner of the land, or any person interested

(*a*) See *supra*, p. 63.

therein, may, after serving one month's notice on the person entitled to the rent, pay or tender to that person the amount certified by the Commissioners. 44 & 45 Vict. c. 41.

(3.) On proof to the Commissioners that payment or tender has been so made, they shall certify that the rent is redeemed under this Act; and that certificate shall be final and conclusive, and the land shall be thereby absolutely freed and discharged from the rent.

(4.) Every requisition under this section shall be in writing; and every certificate under this section shall be in writing, sealed with the seal of the Commissioners.

(5.) This section does not apply to tithe rentcharge, or to a rent reserved on a sale or lease, or to a rent made payable under a grant or licence for building purposes, or to any sum or payment issuing out of land not being perpetual.

(6.) This section applies to rents payable at, or created after, the commencement of this Act.

(7.) This section does not extend to Ireland.

XI.—Powers of Attorney (*a*).

POWERS OF ATTORNEY.

Execution under power of attorney.

46.—(1.) The donee of a power of attorney may, if he thinks fit, execute or do any assurance, instrument, or thing in and with his own name and signature and his own seal, where sealing is required, by the authority of the donor of the power, and every assurance, instrument, and thing so executed and done, shall be as effectual in law, to all intents, as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof.

(2.) This section applies to powers of attorney created by instruments executed either before or after the commencement of this Act.

Payment by attorney under power without notice of death, &c., good.

47.—(1.) Any person making or doing any payment or act, in good faith, in pursuance of a power of attorney, shall not be liable in respect of the payment or act by reason that before the payment or act the donor of the power had died or become lunatic, of unsound mind, or bankrupt, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, or revocation was not at the time of the payment or act known to the person making or doing the same.

(2.) But this section shall not affect any right against the payee of any person interested in any money so paid; and that person

(*a*) See *supra*, pp. 64, 65, and sects. 8 and 9 of the Conv. Act, 1882 (App. V., *infra*).

44 & 45 Vict. c. 41.

shall have the like remedy against the payee as he would have had against the payer if the payment had not been made by him.

(3.) This section applies only to payments and acts made and done after the commencement of this Act.

Deposit of original instruments creating powers of attorney.

48.—(1.) An instrument creating a power of attorney, its execution being verified by affidavit, statutory declaration, or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the Central Office of the Supreme Court *of Judicature* (*a*).

(2.) A separate file of instruments so deposited shall be kept, and any person may search that file, and inspect every instrument so deposited, and an office copy thereof shall be delivered out to him on request.

(3.) A copy of an instrument so deposited may be presented at the office, and may be stamped or marked as an office copy, and when so stamped or marked shall become and be an office copy.

(4.) An office copy of an instrument so deposited shall without further proof be sufficient evidence of the contents of the instrument and of the deposit thereof in the Central Office.

(5.) General Rules may be made for purposes of this section, regulating the practice of the Central Office, and prescribing with the concurrence of the *Commissioners of Her Majesty's* Treasury, the fees to be taken therein (*b*).

(6.) This section applies to instruments creating powers of attorney executed either before or after the commencement of this Act.

CONSTRUCTION AND EFFECT OF DEEDS AND OTHER INSTRUMENTS.

XII.—Construction and Effect of Deeds and other Instruments.

Use of word grant unnecessary (*c*).

49.—(1.) It is hereby declared that the use of the word grant is not necessary in order to convey tenements or hereditaments, corporeal or incorporeal.

(2.) This section applies to conveyances made before or after the commencement of this Act.

Conveyance by a person to himself, &c. (*d*).

50.—(1.) Freehold land, or a thing in action, may be conveyed by a person to himself jointly with another person, by the like means by which it might be conveyed by him to another person;

(*a*) The words in italics have been repealed by the Statute Law Revision Act, 1898.

(*b*) See the rules and order as to Court fees issued in Dec. 1882 (W. N. Jan. 6th, 1883). The words in italics have been repealed by the Statute Law Revision Act, 1898.

(*c*) See *supra*, p. 66.

(*d*) See *supra*, pp. 66—68.

and may, in like manner, be conveyed by a husband to his wife, and by a wife to her husband, alone or jointly with another person. 44 & 45 Vict. c. 41.

(2.) This section applies only to conveyances made after the commencement of this Act.

Words of limitation in fee or in tail (*a*).

51.—(1.) In a deed it shall be sufficient, in the limitation of an estate in fee simple, to use the words in fee simple, without the word heirs; and in the limitation of an estate in tail, to use the words in tail without the words heirs of the body; and in the limitation of an estate in tail male or in tail female, to use the words in tail male, or in tail female, as the case requires, without the words heirs male of the body, or heirs female of the body.

(2.) This section applies only to deeds executed after the commencement of this Act.

Powers simply collateral (*b*).

52.—(1.) A person to whom any power, whether coupled with an interest or not, is given may by deed release, or contract not to exercise, the power.

(2.) This section applies to powers created by instruments coming into operation either before or after the commencement of this Act.

Construction of supplemental or annexed deed (*c*).

53.—(1.) A deed expressed to be supplemental to a previous deed, or directed to be read as an annex thereto, shall, as far as may be, be read and have effect as if the deed so expressed or directed were made by way of indorsement on the previous deed, or contained a full recital thereof.

(2.) This section applies to deeds executed either before or after the commencement of this Act.

Receipt in deed sufficient (*d*).

54.—(1.) A receipt for consideration money or securities in the body of a deed shall be a sufficient discharge for the same to the person paying or delivering the same, without any further receipt for the same being indorsed on the deed.

(2.) This section applies only to deeds executed after the commencement of this Act.

Receipt in deed or indorsed, evidence for subsequent purchaser (*e*).

55.—(1.) A receipt for consideration money or other consideration in the body of a deed or indorsed thereon shall, in favour of a subsequent purchaser, not having notice that the money or other consideration thereby acknowledged to be received was not in fact paid or given, wholly or in part, be sufficient evidence of the payment or giving of the whole amount thereof.

(*a*) See *supra*, pp. 68, 69, and sect. 6 of the Conv. Act, 1882 (App. V., *infra*).
(*b*) See *supra*, pp. 69, 70; also *Re Evered*, [1910] 2 Ch. 147.
(*c*) See *supra*, p. 70.
(*d*) See *supra*, p. 71.
(*e*) See *supra*, pp. 71, 72.

44 & 45 Vict. c. 41.

(2.) This section applies only to deeds executed after the commencement of this Act.

Receipt in deed or indorsed, authority for payment to solicitor (*a*).

56.—(1.) Where a solicitor produces a deed, having in the body thereof or indorsed thereon a receipt for consideration money or other consideration, the deed being executed, or the indorsed receipt being signed, by the person entitled to give a receipt for that consideration, the deed shall be sufficient authority to the person liable to pay or give the same for his paying or giving the same to the solicitor, without the solicitor producing any separate or other direction or authority in that behalf from the person who executed or signed the deed or receipt.

(2.) This section applies only in cases where consideration is to be paid or given after the commencement of this Act.

Sufficiency of Forms in Fourth Schedule (*b*).

57.—Deeds in the form of and using the expressions in the Forms given in the Fourth Schedule to this Act, or in the like form or using expressions to the like effect, shall, as regards form and expression in relation to the provisions of this Act, be sufficient.

Covenants to bind heirs, &c. (*c*).

58.—(1.) A covenant relating to land of inheritance, or devolving on the heir, as special occupant, shall be deemed to be made with the covenantee, his heirs and assigns, and shall have effect as if heirs and assigns were expressed.

(2.) A covenant relating to land not of inheritance, or not devolving on the heir as special occupant, shall be deemed to be made with the covenantee, his executors, administrators, and assigns, and shall have effect as if executors, administrators, and assigns were expressed.

(3.) This section applies only to covenants made after the commencement of this Act.

Covenants to extend to heirs, &c. (*d*).

59.—(1.) A covenant, and a contract under seal, and a bond or obligation under seal, though not expressed to bind the heirs, shall operate in law to bind the heirs and real estate, as well as the executors and administrators and personal estate, of the person making the same, as if heirs were expressed.

(2.) This section extends to a covenant implied by virtue of this Act.

(3.) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond, or obligation, and shall have effect subject to the terms of the covenant, contract, bond, or obligation, and to the provisions therein contained.

(4.) This section applies only to a covenant, contract, bond, or obligation made or implied after the commencement of this Act.

(*a*) See *supra*, pp. 72, 73.
(*b*) See *supra*, p. 73.
(*c*) See *supra*, p. 73.
(*d*) See *supra*, pp. 73, 74.

44 & 45 Vict. c. 41.

60.—(1.) A covenant, and a contract under seal, and a bond or obligation under seal, made with two or more jointly, to pay money or to make a conveyance, or to do any other act, to them or for their benefit, shall be deemed to include, and shall, by virtue of this Act, imply, an obligation to do the act to, or for the benefit of, the survivor or survivors of them, and to, or for the benefit of, any other person to whom the right to sue on the covenant, contract, bond, or obligation devolves.

Effect of covenant with two or more jointly (*a*).

(2.) This section extends to a covenant implied by virtue of this Act.

(3.) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond, or obligation, and shall have effect subject to the covenant, contract, bond, or obligation, and to the provisions therein contained.

(4.) This section applies only to a covenant, contract, bond, or obligation made or implied after the commencement of this Act.

61.—(1.) Where in a mortgage, or an obligation for payment of money, or a transfer of a mortgage or of such an obligation, the sum, or any part of the sum, advanced or owing is expressed to be advanced by or owing to more persons than one out of money, or as money, belonging to them on a joint account, or a mortgage, or such an obligation, or such a transfer is made to more persons than one, jointly, and not in shares, the mortgage money, or other money, or money's worth for the time being due to those persons on the mortgage or obligation, shall be deemed to be and remain money or money's worth belonging to those persons on a joint account, as between them and the mortgagor or obligor; and the receipt in writing of the survivors or last survivor of them, or of the personal representatives of the last survivor, shall be a complete discharge for all money or money's worth for the time being due, notwithstanding any notice to the payer of a severance of the joint account.

Effect of advance on joint account, &c. (*b*).

(2.) This section applies only if and as far as a contrary intention is not expressed in the mortgage, or obligation, or transfer, and shall have effect subject to the terms of the mortgage, or obligation, or transfer, and to the provisions therein contained.

(3.) This section applies only to a mortgage, or obligation, or transfer made after the commencement of this Act.

62.—(1.) A conveyance of freehold land to the use that any person may have, for an estate or interest not exceeding in duration the estate conveyed in the land, any easement, right, liberty, or

Grants of easements, &c., by way of use (*c*).

(*a*) See *supra*, pp. 74, 75.
(*b*) See *supra*, pp. 75, 76.
(*c*) See *supra*, p. 76.

44 & 45 Vict. c. 41.

privilege in, or over, or with respect to that land, or any part thereof, shall operate to vest in possession in that person that easement, right, liberty, or privilege, for the estate or interest expressed to be limited to him; and he, and the persons deriving title under him, shall have, use, and enjoy the same accordingly.

(2.) This section applies only to conveyances made after the commencement of this Act.

Provision for all the estate, &c. (*a*).

63.—(1.) Every conveyance shall, by virtue of this Act, be effectual to pass all the estate, right, title, interest, claim, and demand which the conveying parties respectively have, in, to, or on the property conveyed, or expressed, or intended so to be, or which they respectively have power to convey in, to, or on the same.

(2.) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained.

(3.) This section applies only to conveyances made after the commencement of this Act.

Construction of implied covenants (*b*).

64. In the construction of a covenant or proviso, or other provision, implied in a deed by virtue of this Act, words importing the singular or plural number, or the masculine gender, shall be read as also importing the plural or singular number, or as extending to females, as the case may require.

LONG TERMS.

XIII.—Long Terms.

Enlargement of residue of long term into fee simple (*c*).

65.—(1.) Where a residue unexpired of not less than two hundred years of a term, which, as originally created, was for not less than three hundred years, is subsisting in land, whether being the whole land originally comprised in the term, or part only thereof, without any trust or right of redemption affecting the term in favour of the freeholder, or other person entitled in reversion expectant on the term, and without any rent, or with merely a peppercorn rent or other rent having no money value, incident to the reversion, or having had a rent, not being merely a peppercorn rent or other rent having no money value, originally so incident, which subsequently has been released, or has become barred by lapse of time, or has in any other way ceased to be payable, then the term may be enlarged into a fee simple in the manner, and subject to the restrictions, in this section provided.

(*a*) See *supra*, pp. 76, 77.
(*b*) See *supra*, p. 77.
(*c*) See *supra*, pp. 77—79, and sect. 11 of the Conv. Act, 1882 (App. V., *infra*).

(2.) Each of the following persons (namely):

(i.) Any person beneficially entitled in right of the term, whether subject to any incumbrance or not, to possession of any land comprised in the term; but, in case of a married woman, with the concurrence of her husband, unless she is entitled for her separate use, whether with restraint on anticipation or not, and then without his concurrence;

(ii.) Any person being in receipt of income as trustee, in right of the term, or having the term vested in him in trust for sale, whether subject to any incumbrance or not;

(iii.) Any person in whom, as personal representative of any deceased person, the term is vested, whether subject to any incumbrance or not:

shall, as far as regards the land to which he is entitled, or in which he is interested, in right of the term, in any such character as aforesaid, have power by deed to declare to the effect that, from and after the execution of the deed, the term shall be enlarged into a fee simple.

(3.) Thereupon, by virtue of the deed and of this Act, the term shall become and be enlarged accordingly, and the person in whom the term was previously vested shall acquire and have in the land a fee simple instead of the term.

(4.) The estate in fee simple so acquired by enlargement shall be subject to all the same trusts, powers, executory limitations over, rights and equities, and to all the same covenants and provisions relating to user and enjoyment, and to all the same obligations of every kind, as the term would have been subject to if it had not been so enlarged.

(5.) But where any land so held for the residue of a term has been settled in trust by reference to other land, being freehold land, so as to go along with that other land as far as the law permits, and, at the time of enlargement, the ultimate beneficial interest in the term, whether subject to any subsisting particular estate or not, has not become absolutely and indefeasibly vested in any person, then the estate in fee simple acquired as aforesaid shall, without prejudice to any conveyance for value previously made by a person having a contingent or defeasible interest in the term, be liable to be, and shall be conveyed and settled in like manner as the other land, being freehold land, aforesaid, and until so conveyed and settled shall devolve beneficially as if it had been so conveyed and settled.

(6.) The estate in fee simple so acquired shall, whether the term was originally created without impeachment of waste or not, include the fee simple in all mines and minerals which at the time

44 & 45 Vict. c. 41.

of enlargement have not been severed in right, or in fact, or have not been severed or reserved by an inclosure Act or award.

(7.) This section applies to every such term as aforesaid subsisting at or after the commencement of this Act.

ADOPTION OF ACT.

XIV.—Adoption of Act.

Protection of solicitor and trustees adopting Act (*a*).

66.—(1.) It is hereby declared that the powers given by this Act to any person, and the covenants, provisions, stipulations and words which under this Act are to be deemed included or implied in any instrument, or are by this Act made applicable to any contract for sale or other transaction, are and shall be deemed in law proper powers, covenants, provisions, stipulations and words, to be given by or to be contained in any such instrument, or to be adopted in connection with, or applied to, any such contract or transaction; and a solicitor shall not be deemed guilty of neglect or breach of duty, or become in any way liable, by reason of his omitting, in good faith, in any such instrument, or in connection with any such contract or transaction, to negative the giving, inclusion, implication, or application of any of those powers, covenants, provisions, stipulations, or words, or to insert or apply any others in place thereof, in any case where the provisions of this Act would allow of his doing so.

(2.) But nothing in this Act shall be taken to imply that the insertion in any such instrument, or the adoption in connection with, or the application to, any contract or transaction, of any further or other powers, covenants, provisions, stipulations, or words is improper.

(3.) Where the solicitor is acting for trustees, executors, or other persons in a fiduciary position, those persons shall also be protected in like manner.

(4.) Where such persons are acting without a solicitor, they shall also be protected in like manner.

MISCELLANEOUS.

XV.—Miscellaneous.

Regulations respecting notice (*b*).

67.—(1.) Any notice required or authorised by this Act to be served shall be in writing.

(2.) Any notice required or authorised by this Act to be served on a lessee or mortgagor shall be sufficient although only addressed to the lessee or mortgagor by that designation, without his name, or

(*a*) See *supra*, pp. 79, 80.
(*b*) See *supra*, p. 80.

generally to the persons interested, without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn, or unascertained.

(3.) Any notice required or authorised by this Act to be served shall be sufficiently served if it is left at the last-known place of abode or business in the United Kingdom of the lessee, lessor, mortgagee, mortgagor, or other person to be served, or, in case of a notice required or authorised to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage, or in case of a mining lease, is left for the lessee at the office or counting-house of the mine.

(4.) Any notice required or authorised by this Act to be served shall also be sufficiently served if it is sent by post in a registered letter addressed to the lessee, lessor, mortgagee, mortgagor, or other person to be served, by name, at the aforesaid place of abode or business, office, or counting-house, and if that letter is not returned through the post-office undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

(5.) This section does not apply to notices served in proceedings in the Court.

Short title of 5 & 6 Will. 4, c. 62 (*a*).

68. *The Act described in Part II. of the First Schedule to this Act shall, by virtue of this Act, have the short title of the Statutory Declarations Act*, 1835, *and may be cited by that short title in any declaration made for any purpose under or by virtue of that Act, or in any other document, or in any Act of Parliament.*

XVI.—COURT; PROCEDURE; ORDERS.

COURT; PROCEDURE; ORDERS.

Regulations respecting payments into Court and applications (*b*).

69.—(1.) All matters within the jurisdiction of the Court under this Act shall, subject to the Acts regulating the Court, be assigned to the Chancery Division of the Court.

(2.) Payment of money into Court shall effectually exonerate therefrom the person making the payment.

(3.) Every application to the Court shall, except where it is otherwise expressed, be by summons at Chambers.

(4.) On an application by a purchaser notice shall be served in the first instance on the vendor.

(5.) On an application by a vendor notice shall be served in the first instance on the purchaser.

(*a*) See *supra*, p. 80. The same title is assigned to the Act by the Short Titles Act, 1896.

(*b*) See *supra*, p. 80. A rule under the Act was issued in Dec., 1882, respecting powers of attorney, and is cited under sect. 48, *supra*, p. 806.

44 & 45 Vict. c. 41.

(6.) On any application notice shall be served on such persons, if any, as the Court thinks fit.

(7.) The Court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges or expenses of all or any of the parties to any application.

39 & 40 Vict. c. 59, s. 17.

(8.) General rules for purposes of this Act shall be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, and may be made accordingly.

(9.) The powers of the Court may, as regards land in the County Palatine of Lancaster, be exercised also by the Court of Chancery of the County Palatine; and rules for regulating proceedings in that Court shall be from time to time made by the Chancellor of the Duchy of Lancaster, with the advice and consent of a Judge of the High Court acting in the Chancery Division, and of the Vice-Chancellor of the County Palatine.

(10.) *General Rules and Rules of the Court of Chancery of the County Palatine, under this Act may be made at any time after the passing of this Act, to take effect on or after the commencement of this Act.*

Orders of Court conclusive (*a*).

70.—(1.) An order of the Court under any statutory or other jurisdiction shall not, as against a purchaser, be invalidated on the ground of want of jurisdiction, or of want of any concurrence, consent, notice or service, whether the purchaser has notice of any such want or not.

(2.) This section shall have effect with respect to any lease, sale or other Act under the authority of the Court, and purporting to be in pursuance of the Settled Estates Act, 1877, *notwithstanding the exception in section forty of that Act*, or to be in pursuance of any former Act repealed by that Act, notwithstanding any exception in such former Act.

40 & 41 Vict. c. 18, s. 40.

(3.) This section applies to all orders made before or after the commencement of this Act, except any order which has before the commencement of this Act been set aside or determined to be invalid on any ground, and except any order as regards which an action or proceeding is at the commencement of this Act pending for having it set aside or determined to be invalid.

REPEALS.

XVII.—Repeals.

Repeal of enactments in Part III. of

71.—(1.) *The enactments described in Part III. of the Second Schedule to this Act are hereby repealed.*

(2.) *The repeal by this Act of any enactment shall not affect the*

(*a*) See *supra*, p. 81.

validity or invalidity, or any operation, effect or consequence, of any instrument executed or made, or of anything done or suffered, before the commencement of this Act, or any action, proceeding or thing then pending or uncompleted; and every such action, proceeding and thing may be carried on and completed as if there had been no such repeal in this Act; but this provision shall not be construed as qualifying the provision of this Act relating to section forty of the Settled Estates Act, 1877, *or any former Act repealed by that Act.*

44 & 45 Vict. c. 41.

Second Schedule; restriction on all appeals (*a*).

XVIII.—Ireland.

IRELAND.

72.—(1.) In the application of this Act to Ireland the foregoing provisions shall be modified as in this section provided.

Modifications respecting Ireland.

(2.) The Court shall be Her Majesty's High Court *of Justice* in Ireland (*b*).

(3.) All matters within the jurisdiction of that Court shall, subject to the Acts regulating that Court, be assigned to the Chancery Division of that Court; but general rules under this Act may direct that any of those matters be assigned to the Land Judges of that Division.

(4.) The proper office of the Supreme Court *of Judicature* in Ireland shall be substituted for the central office of the Supreme Court *of Judicature* (*b*).

(5.) General Rules for purposes of this Act for Ireland shall be deemed Rules of Court within the Supreme Court of Judicature Act (Ireland), 1877, and may be made accordingly, *at any time after the passing of this Act, to take effect on or after the commencement of this Act.*

40 & 41 Vict. c. 57, s. 69.

73.—(1.) Section five of the Vendor and Purchaser Act, 1874, is hereby repealed from and after the commencement of this Act, as regards cases of death thereafter happening; and section seven of the Vendor and Purchaser Act, 1874, is hereby repealed as from the date at which it came into operation.

Death of bare trustee, intestate, &c., 37 & 38 Vict. c. 78 (*c*).

(2.) This section extends to Ireland only.

(*a*) See *supra*, p. 82.

(*b*) The words in italics have been repealed by the Statute Law Revision Act, 1898.

(*c*) See *supra*, p. 82.

SCHEDULES.

THE FIRST SCHEDULE (*a*).

ACTS AFFECTED.

PART I. (*b*).

1 & 2 Vict. c. 110.—An Act for abolishing arrest on mesne process in civil actions, except in certain cases; for extending the remedies of creditors against the property of debtors; and for amending the laws for the relief of insolvent debtors in England.

2 & 3 Vict. c. 11.—An Act for the better protection of purchasers against judgments, Crown debts, lis pendens, and fiats in bankruptcy.

18 & 19 Vict. c. 15.—An Act for the better protection of purchasers against judgments, Crown debts, cases of lis pendens, and life annuities or rentcharges.

22 & 23 Vict. c. 35.—An Act to further amend the law of property and to relieve trustees.

23 & 24 Vict. c. 38.—An Act to further amend the law of property.

23 & 24 Vict. c. 115.—An Act to simplify and amend the practice as to the entry of satisfaction on Crown debts and on judgments.

27 & 28 Vict. c. 112.—An Act to amend the law relating to future judgments, statutes, and recognizances.

28 & 29 Vict. c. 104.—The Crown Suits, &c. Act, 1865.

31 & 32 Vict. c. 54.—The Judgments Extension Act, 1868.

PART II.

5 & 6 Will. 4, c. 62.—An Act to repeal an Act of the present session of Parliament, intituled "An Act for the more effectual abolition of oaths and affirmations taken and made in various Departments of the State, and to substitute declarations in lieu thereof; and for the more entire suppression of voluntary and extra-judicial oaths and affidavits;" and to make other provisions for the abolition of unnecessary oaths (*c*).

THE SECOND SCHEDULE (*d*).

REPEALS.

A description or citation of a portion of an Act is inclusive of the words, section, or other part, first or last mentioned, or otherwise referred to as forming the beginning, or as forming the end, of the portion comprised in the description or citation.

(*a*) Repealed by the Statute Law Revision Act, 1894.
(*b*) See sect. 2 of the Conv. Act, 1882 (App. V., *infra*).
(*c*) See sect. 68, *supra*, p. 813.
(*d*) Repealed by the Statute Law Revision Act, 1894.

PART I. (*a*).

22 & 23 Vict. c. 35, in part.	An Act to further amend the law of property and to relieve trustees . Sections four to nine.	in part; namely,—
23 & 24 Vict. c. 126, in part.	The Common Law Procedure Act, 1860 . . . . . Section two.	in part; namely,—

PART II. (*b*).

15 & 16 Vict. c. 86, in part.	An Act to amend the practice and course of proceeding in the High Court of Chancery . . . Section forty-eight.	in part; namely,—

PART III. (*c*).

8 & 9 Vict. c. 119.	An Act to facilitate the conveyance of real property.	
23 & 24 Vict. c. 145, in part.	An Act to give to trustees, mortgagees, and others certain powers now commonly inserted in settlements, mortgages, and wills . Parts II. and III. (sections eleven to thirty).	in part; namely,—

THE THIRD SCHEDULE.

STATUTORY MORTGAGE.

PART I.

Deed of Statutory Mortgage.

THIS INDENTURE made by way of statutory mortgage the day of 1882 between *A.* of [*&c.*] of the one part and *M.* of [*&c.*] of the other part WITNESSETH that in consideration of the sum of £ now paid to *A.* by *M.* of which sum *A.* hereby acknowledges the receipt *A.* as mortgagor and as beneficial owner hereby conveys to *M.* All that [*&c.*] To hold to and to the use of *M.* in fee simple for securing payment on the day of 1883 of the principal sum of £ as the mortgage money with interest thereon at the rate of [*four*] per centum per annum.

In witness &c.

*** *Variations in this and subsequent forms to be made, if required, for leasehold land, or other matter.*

(*a*) See sect. 14, *supra*, pp. 788, 789.
(*b*) See sect. 25, *supra*, pp. 796, 797.
(*c*) See sect. 71, *supra*, p. 814.

PART II.

(A.)

Deed of Statutory Transfer, Mortgagor not joining.

THIS INDENTURE made by way of statutory transfer of mortgage the day of 1883 between *M.* of [*&c.*] of the one part and *T.* of [*&c.*] of the other part supplemental to an indenture made by way of statutory mortgage dated the day of 1882 and made between [*&c.*] WITNESSETH that in consideration of the sum of £ now paid to *M.* by *T.* being the aggregate amount of £ mortgage money and £ interest due in respect of the said mortgage of which sum *M.* hereby acknowledges the receipt *M.* as mortgagee hereby conveys and transfers to *T.* the benefit of the said mortgage.

In witness &c.

(B.)

Deed of Statutory Transfer, a Covenantor joining.

THIS INDENTURE made by way of statutory transfer of mortgage the day of 1883 between *A.* of [*&c.*] of the first part *B.* of [*&c.*] of the second part and *C.* of [*&c.*] of the third part supplemental to an indenture made by way of statutory mortgage dated the day of 1882 and made between [*&c.*] WITNESSETH that in consideration of the sum of £ now paid to *A.* by *C.* being the mortgage money due in respect of the said mortgage no interest being now due and payable thereon of which sum *A.* hereby acknowledges the receipt *A.* as mortgagee with the concurrence of *B.* who joins herein as covenantor hereby conveys and transfers to *C.* the benefit of the said mortgage.

In witness &c.

(C.)

Statutory Transfer and Statutory Mortgage combined.

THIS INDENTURE made by way of statutory transfer of mortgage and statutory mortgage the day of 1883 between *A.* of [*&c.*] of the first part *B.* of [*&c.*] of the second part and *C.* of [*&c.*] of the third part supplemental to an indenture made by way of statutory mortgage dated the day of 1882 and made between [*&c.*] WHEREAS the principal sum of £ only remains due in respect of the said mortgage as the mortgage money and no interest is now due and payable thereon. AND WHEREAS *B.* is seised in fee simple of the land comprised in the said mortgage subject to that mortgage. NOW THIS INDENTURE WITNESSETH, that in consideration of the sum of £ now paid to *A.* by *C.* of which sum *A.* hereby acknowledges the receipt and *B.* hereby acknowledges the payment and receipt as aforesaid * *A.* as mortgagee hereby conveys and transfers to *C.* the benefit of the said mortgage. AND THIS INDENTURE ALSO WITNESSETH that for the same consideration *A.* as mortgagee and according to his estate and by direction of *B.* hereby conveys and *B.* as beneficial owner hereby conveys and confirms to *C.* All that [*&c.*] To hold to and to the use of *C.* in fee simple for securing payment on the day of 1882 of † the sum of £ as the mortgage money with interest thereon at the rate of [*four*] per centum per annum.

In witness, &c.

[*Or, in case of further advance, after* aforesaid *at* insert* and also in

consideration of the further sum of £ now paid by *C.* to *B.* of which sum *B.* hereby acknowledges the receipt, *and after* of *at* † *insert* the sums of £ and £ making together.]

*** *Variations to be made, as required, in case of the deed being made by indorsement, or in respect of any other thing.*

Part III.

Deed of Statutory Re-conveyance of Mortgage.

This Indenture made by way of statutory re-conveyance of mortgage the day of 1884 between *C.* of [*&c.*] of the one part and *B.* of [*&c.*] of the other part supplemental to an indenture made by way of statutory transfer of mortgage dated the day of 1883 and made between [*&c.*] Witnesseth that in consideration of all principal money and interest due under that indenture having been paid of which principal and interest *C.* hereby acknowledges the receipt *C.* as mortgagee hereby conveys to *B.* all the lands and hereditaments now vested in *C.* under the said indenture, To hold to and to the use of *B.* in fee simple discharged from all principal money and interest secured by and from all claims and demands under the said indenture.

In witness &c.

*** *Variations as noted above.*

THE FOURTH SCHEDULE.

Short Forms of Deeds.

I.—*Mortgage.*

This Indenture of Mortgage made the day of 1882 between *A.* of [*&c.*] of the one part and *B.* of [*&c.*] and *C.* of [*&c.*] of the other part Witnesseth that in consideration of the sum of £ paid to *A.* by *B.* and *C.* out of money belonging to them on a joint account of which sum *A.* hereby acknowledges the receipt *A.* hereby covenants with *B.* and *C.* to pay to them on the day of 1882 the sum of £ with interest thereon in the meantime at the rate of [*four*] per centum per annum and also as long after that day as any principal money remains due under this mortgage to pay to *B.* and *C.* interest thereon at the same rate by equal half-yearly payments on the day of and the day of And this Indenture also witnesseth that for the same consideration *A.* as beneficial owner hereby conveys to *B.* and *C.* All that [*&c.*] To hold to and to the use of *B.* and *C.* in fee simple subject to the proviso for redemption following (namely) that if *A.* or any person claiming under him shall on the day of 1882 pay to *B.* and *C.* the sum of £ and interest thereon at the rate aforesaid then *B.* and *C.* or the persons claiming under them will at the request and cost of *A.* or the persons claiming under him reconvey the premises to *A.* or the persons claiming under him And *A.* hereby covenants with *B.* as follows [*here add covenant as to fire insurance or other special covenant required*].

In witness &c.

II.—*Further Charge.*

THIS INDENTURE made the day of 18 between [*the same parties as the foregoing mortgage*] and supplemental to an indenture of mortgage dated the day of 18 and made between the same parties for securing the sum of £ and interest at [*four*] per centum per annum on property at [*&c.*] WITNESSETH that in consideration of the further sum of £ paid to *A.* by *B.* and *C.* out of money belonging to them on a joint account [*add receipt and covenant as in the foregoing mortgage*] and further that all the property comprised in the before-mentioned indenture of mortgage shall stand charged with the payment to *B.* and *C.* of the sum of £ and the interest thereon hereinbefore covenanted to be paid as well as the sum of £ and interest secured by the same indenture.

In witness &c.

III.—*Conveyance on Sale.*

THIS INDENTURE made the day of 1883 between *A.* of [*&c.*] of the first part *B.* of [*&c.*] and *C.* of [*&c.*] of the second part and *M.* of [*&c.*] of the third part WHEREAS by an indenture dated [*&c.*] and made between [*&c.*] the lands hereinafter mentioned were conveyed by *A.* to *B.* and *C.* in fee simple by way of mortgage for securing £ and interest and by a supplemental indenture dated [*&c.*] and made between the same parties those lands were charged by *A.* with the payment to *B.* and *C.* of the further sum of £ and interest thereon AND WHEREAS a principal sum of £ remains due under the two before-mentioned indentures but all interest thereon has been paid as *B.* and *C.* hereby acknowledge NOW THIS INDENTURE WITNESSETH that in consideration of the sum of £ paid by the direction of *A.* to *B.* and *C.* and of the sum of £ paid to *A.* those two sums making together the total sum of £ paid by *M.* for the purchase of the fee simple of the lands hereinafter mentioned of which sum of £ *B.* and *C.* hereby acknowledge the receipt and of which total sum of £ *A.* hereby acknowledges the payment and receipt in manner before-mentioned *B.* and *C.* as mortgagees and by the direction of *A.* as beneficial owner hereby convey and *A.* as beneficial owner hereby conveys and confirms to *M.* All that [*&c.*] To hold to and to the use of *M.* in fee simple discharged from all money secured by and from all claims under the before-mentioned indentures [*Add, if required*, And *A.* hereby acknowledges the right of *M.* to production of the documents of title mentioned in the Schedule hereto and to delivery of copies thereof and hereby undertakes for the safe custody thereof.]

In witness, &c.

[The Schedule above referred to.

To contain list of documents retained by A.]

IV.—*Marriage Settlement.*

THIS INDENTURE made the day of 1882 between *John M.* of [*&c.*] of the first part *Jane S.* of [*&c.*] of the second part and *X.* of [*&c.*] and *Y.* of [*&c.*] of the third part WITNESSETH that in consideration of the intended marriage between *John M.* and *Jane S. John M.* as settlor hereby conveys to *X.* and *Y.* All that [*&c.*] To hold to *X.* and *Y.* in fee simple to the use of *John M.* in fee simple until the marriage and after the marriage to the use of *John M.* during his life without

impeachment of waste with remainder after his death to the use that *Jane S.* if she survives him may receive during the rest of her life a yearly jointure rentcharge of £ to commence from his death and to be paid by equal half-yearly payments the first thereof to be made at the end of six calendar months from his death if she is then living or if not a proportional part to be paid at her death and subject to the before-mentioned rentcharge to the use of *X.* and *Y.* for a term of five hundred years without impeachment of waste on the trusts hereinafter declared and subject thereto to the use of the first and other sons of *John M.* and *Jane S.* successively according to seniority in tail male with remainder [*insert here if thought desirable*, to the use of the same first and other sons successively according to seniority in tail with remainder] to the use of all the daughters of *John M.* and *Jane S.* in equal shares as tenants in common in tail with cross remainders between them in tail with remainder to the use of *John M.* in fee simple [*Insert trusts of term of 500 years for raising portions; also, if required, power to charge jointure and portions on a future marriage; also powers of sale, exchange, and partition, and other powers and provisions, if and as desired*].

In witness &c.

APPENDIX V.

45 & 46 Vict. c. 39.

45 & 46 VICT. CAP. 39.

AN ACT FOR FURTHER IMPROVING THE PRACTICE OF CONVEYANCING; AND FOR OTHER PURPOSES.

[10*th August*, 1882.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same as follows:—

Preliminary.

Preliminary.

Short titles: commencement; extent; interpretation.

1.—(1.) This Act may be cited as the Conveyancing Act, 1882; and the Conveyancing and Law of Property Act, 1881 (in this Act referred to as the Conveyancing Act of 1881), and this Act may be cited together as the Conveyancing Acts, 1881, 1882 (*a*).

44 & 45 Vict. c. 41.

(2.) This Act, except where it is otherwise expressed, shall commence and take effect from and immediately after the thirty-first day of December one thousand eight hundred and eighty-two, which time is in this Act referred to as the commencement of this Act.

(3.) This Act does not extend to Scotland.

(4.) In this Act and in the Schedule thereto—

(i.) Property includes real and personal property, and any debt, and any thing in action, and any other right or interest in the nature of property, whether in possession or not;

(ii.) Purchaser includes a lessee or mortgagee, or an intending purchaser, lessee, or mortgagee, or other person, who, for valuable consideration, takes or deals for property, and purchase has a meaning corresponding with that of purchaser;

3 & 4 Will. 4, c. 74.

(iii.) The Act of the session of the third and fourth years of King William the Fourth (chapter seventy-four) "for

(*a*) See p. 772, *supra*, note (*c*).

the abolition of Fines and Recoveries, and for the substitution of more simple modes of Assurance" is referred to as the Fines and Recoveries Act; and the Act of the session of the fourth and fifth years of King William the Fourth (chapter ninety-two) "for the abolition of Fines and Recoveries, and for the substitution of more simple modes of Assurance in Ireland," is referred to as the Fines and Recoveries (Ireland) Act.

45 & 46 Vict. c. 39.

4 & 5 Will. 4, c. 92.

Searches.

Searches.

Official negative and other certificates of searches for judgments, Crown debts, &c.

2.—(1.) Where any person requires, for purposes of this section, search to be made in the Central Office of the Supreme Court of Judicature for entries of judgments, deeds, or other matters or documents, whereof entries are required or allowed to be made in that office by any Act described in Part I. of the First Schedule to the Conveyancing Act of 1881, or by any other Act, he may deliver in the office a requisition in that behalf, referring to this section.

(2.) Thereupon the proper officer shall diligently make the search required, and shall make and file in the office a certificate setting forth the result thereof; and office copies of that certificate shall be issued on requisition, and an office copy shall be evidence of the certificate.

(3.) In favour of a purchaser, as against persons interested under or in respect of judgments, deeds or other matters or documents, whereof entries are required or allowed as aforesaid, the certificate, according to the tenor thereof, shall be conclusive, affirmatively or negatively as the case may be.

(4.) Every requisition under this section shall be in writing, signed by the person making the same, specifying the name against which he desires search to be made, or in relation to which he requires an office copy certificate of result of search, and other sufficient particulars; and the person making any such requisition shall not be entitled to a search, or an office copy certificate, until he has satisfied the proper officer that the same is required for the purposes of this section.

(5.) General Rules shall be made for purposes of this section, prescribing forms and contents of requisitions and certificates, and regulating the practice of the office, and prescribing with the concurrence of the *Commissioners of Her Majesty's* Treasury, the fees to be taken therein; which Rules shall be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, as altered by section nineteen of the Supreme Court of Judicature Act,

39 & 40 Vict. c. 59.

45 & 46 Vict. c. 39.

1881, *and may be made, at any time after the passing of this Act, to take effect on or after the commencement of this Act* (*a*).

44 & 45 Vict. c. 68.

(6.) If any officer, clerk, or person employed in the office commits, or is party or privy to, any act of fraud or collusion, or is wilfully negligent, in the making of or otherwise in relation to any certificate or office copy under this section, he shall be guilty of a misdemeanour.

(7.) Nothing in this section or in any rule made thereunder shall take away, abridge, or prejudicially affect any right which any person may have independently of this section to make any search in the office; and every such search may be made as if this section or any such Rule had not been enacted or made.

(8.) Where a solicitor obtains an office copy certificate of result of search under this section, he shall not be answerable in respect of any loss that may arise from error in the certificate.

(9.) Where the solicitor is acting for trustees, executors, agents, or other persons in a fiduciary position, those persons also shall not be so answerable.

(10.) Where such persons obtain such an office copy without a solicitor, they shall also be protected in like manner.

3 & 4 Will. 4, c. 74.

(11.) Nothing in this section applies to deeds inrolled under the Fines and Recoveries Act, or under any other Act, or under any statutory Rule.

(12.) This section does not extend to Ireland.

Notice. *Notice.*

Restriction on constructive notice.

3.—(1.) A purchaser shall not be prejudicially affected by notice of any instrument, fact, or thing unless—

(i.) It is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him; or

(ii.) In the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel, as such, or of his solicitor, or other agent, as such, or would have come to the knowledge of his solicitor, or other agent, as such, if such inquiries and inspection had been made as ought

(*a*) See the Rules under this section issued in Dec. 1882 (W. N., Jan. 6th, 1883). The words in italics have been repealed by the Statute Law Revision Act, 1898.

reasonably to have been made by the solicitor or other agent (*a*). 45 & 46 Vict. c. 39.

(2.) This section shall not exempt a purchaser from any liability under, or any obligation to perform or observe any covenant, condition, provision, or restriction contained in any instrument under which his title is derived, mediately or immediately; and such liability or obligation may be enforced in the same manner and to the same extent as if this section had not been enacted.

(3.) A purchaser shall not by reason of anything in this section be affected by notice in any case where he would not have been so affected if this section had not been enacted.

(4.) This section applies to purchases made either before or after the commencement of this Act; *save that, where an action is pending at the commencement of this Act, the rights of the parties shall not be affected by this section* (*b*).

Leases. *Leases.*

Contract for lease not part of title to lease.

4.—(1.) Where a lease is made under a power contained in a settlement, will, Act of Parliament, or other instrument, any preliminary contract for or relating to the lease shall not, for the purpose of the deduction of title to an intended assign, form part of the title, or evidence of the title to the lease.

(2.) This section applies to leases made either before or after the commencement of this Act.

Separate Trustees. *Separate Trustees.*

Appointment of separate sets of trustees.

[**5.**—(1.) *On an appointment of new trustees, a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property; or, if only one trustee was originally appointed, then one separate trustee may be so appointed for the first-mentioned part.*

(2.) *This section applies to trusts created either before or after the commencement of this Act* (*c*).]

(*a*) See *Re Cousins*, 31 Ch. D. 671; *Bailey* v. *Barnes*, [1894] 1 Ch. 25. For a discussion of the doctrine of constructive notice, see the *English and Scottish Mercantile Investment Co.* v. *Brunton*, [1892] 2 Q. B. 700; *Molyneux* v. *Hawtrey*, [1903] 2 K. B. 487; *Davis* v. *Hutchings*, [1907] 1 Ch. 356; and for recent illustrations of it, the cases of *Taylor* v. *London and County Banking Co.*, [1901] 2 Ch. 231; *Re The Alms Corn Charity*, *ib.* 750; *Re Valletort, &c. Co.*, [1903] 2 Ch. 654; and cf. *Hunt* v. *Luck*, [1902] 1 Ch. 428; and *Jared* v. *Clements*, [1902] 2 Ch. 399; [1903] 1 Ch. 428. The doctrine appears to be confined to dealings with land: *Manchester Trust* v. *Furness*, [1895] 2 Q. B. 539; *Molyneux* v. *Hawtrey*, *ubi supra*.

(*b*) The words in italics have been repealed by the Statute Law Revision Act, 1898.

(*c*) This section and the amending section (sect. 6) of the Conv. Act,

45 & 46 Vict. c. 39.

Powers.

Powers.

Disclaimer of power by trustees (*a*).

6.—(1.) A person to whom any power, whether coupled with an interest or not is given, may, by deed, disclaim the power; and, after disclaimer, shall not be capable of exercising or joining in the exercise of the power.

(2.) On such disclaimer, the power may be exercised by the other or others, or the survivors or survivor of the others, of the persons to whom the power is given, unless the contrary is expressed in the instrument creating the power.

(3.) This section applies to powers created by instruments coming into operation either before or after the commencement of this Act.

Married Women.

Acknowledgment of deeds by married women (*b*).

Married Women.

7.—(1.) In section seventy-nine of the Fines and Recoveries Act, and section seventy of the Fines and Recoveries (Ireland) Act, there shall, by virtue of this Act, be substituted for the words "two of the perpetual commissioners, or two special commissioners," the words "one of the perpetual commissioners, or one special commissioner;" and in section eighty-three of the Fines and Recoveries Act, and section seventy-four of the Fines and Recoveries (Ireland) Act, there shall, by virtue of this Act, be substituted for the word "persons" the word "person," and for the word "commissioners" the words "a commissioner;" and all other provisions of those Acts, and all other enactments having reference in any manner to the sections aforesaid, shall be read and have effect accordingly.

(2.) Where the memorandum of acknowledgment by a married woman of a deed purports to be signed by a person authorised to take the acknowledgment, the deed shall, as regards the execution thereof by the married woman, take effect at the time of acknowledgment, and shall be conclusively taken to have been duly acknowledged.

(3.) A deed acknowledged before or after the commencement of this Act by a married woman, before a Judge of the High Court *of Justice* in England or Ireland, or before a judge of a county court in England, or before a chairman in Ireland, or before a perpetual commissioner or special commissioner, shall not be impeached or impeachable by reason only that such judge, chairman, or commissioner was interested or concerned either as a party, or as solicitor,

1892 (App. VI., *infra*), have been repealed, and their provisions are re-enacted with slight verbal alterations in the Trustee Act, 1893, s. 10, sub-s. 2 (b) (App. XVI., *infra*).

(*a*) See sect. 52 of the Conv. Act, 1881; and *supra*, pp. 69, 70.

(*b*) See *supra*, p. 58.

or clerk to the solicitor for one of the parties, or otherwise, in the transaction giving occasion for the acknowledgment; and General Rules shall be made for preventing any person interested or concerned as aforesaid from taking an acknowledgment; but no such Rule shall make invalid any acknowledgment; and those Rules shall, as regards England, be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, as altered by section nineteen of the Supreme Court of Judicature Act, 1881, and shall, as regards Ireland, be deemed Rules of Court within the Supreme Court of Judicature Act (Ireland), 1877, *and may be made accordingly, for England and Ireland respectively, at any time after the passing of this Act, to take effect on or after the commencement of this Act* (*a*). 45 & 46 Vict. c. 39. 39 & 40 Vict. c. 59. 44 & 45 Vict. c. 68. 40 & 41 Vict. c. 57.

(4.) *The enactments described in the Schedule to this Act are hereby repealed* (*b*).

(5.) The foregoing provisions of this section, including the repeal therein, apply only to the execution of deeds by married women after the commencement of this Act.

(6.) *Notwithstanding the repeal or any other thing in this section, the certificate, if not lodged before the commencement of this Act, of the taking of an acknowledgment by a married woman of a deed executed before the commencement of this Act, with any affidavit relating thereto, shall be lodged, examined, and filed in the like manner and with the like effects and consequences as if this section had not been enacted* (*c*).

(7.) There shall continue to be kept in the proper office of the Supreme Court of Judicature an index to all certificates of acknowledgments of deeds by married women lodged therein, before or after the commencement of this Act, containing the names of the married women and their husbands, alphabetically arranged, and the dates of the certificates and of the deeds to which they respectively relate, and other particulars found convenient; and every such certificate lodged after the commencement of this Act shall be entered in the index as soon as may be after the certificate is filed.

(*a*) See the Rules under the Act for the Abolition of Fines and Recoveries, and this section, issued in Dec., 1882 (W. N., Jan. 6th, 1883). The words in italics have been repealed by the Statute Law Revision Act, 1898.

(*b*) The effect of this repeal is to do away with certificates of acknowledgment, the filing of which was previously essential to the efficacy of the acknowledgment. *Jolly* v. *Hancock*, 7 Exch. 820. The sub-section has been repealed by the Statute Law Revision Act, 1898.

(*c*) This sub-section has been repealed by the Statute Law Revision Act, 1898.

45 & 46 Vict. c. 39.

(8.) An office copy of any such certificate filed before or after the commencement of this Act shall be delivered to any person applying for the same; and every such office copy shall be received as evidence of the acknowledgment of the deed to which the certificate refers.

Powers of Attorney.

Powers of Attorney (*a*).

Effect of power of attorney, for value, made absolutely irrevocable.

8.—(1.) If a power of attorney, given for valuable consideration, is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser,—

(i.) The power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power; and

(ii.) Any act done at any time by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power had not been done or happened; and

(iii.) Neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power without the concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power.

(2.) This section applies only to powers of attorney created by instruments executed after the commencement of this Act.

Effect of power of attorney, for value or not, made irrevocable for fixed time.

9.—(1.) If a power of attorney, whether given for valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed time therein specified, not exceeding one year from the date of the instrument, then, in favour of a purchaser,—

(i.) The power shall not be revoked, for and during that fixed time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power; and

(*a*) See Part XI. of the Conv. Act, 1881 (App. IV., *supra*), and pp. 64, 65, *supra*.

(ii.) Any act done within that fixed time, by the donee of the power, in pursuance of the power, shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power, had not been done or happened; and 45 & 46 Vict. c. 39.

(iii.) Neither the donee of the power, nor the purchaser, shall at any time be prejudicially affected by notice either during or after that fixed time of anything done by the donor of the power during that fixed time, without the concurrence of the donee of the power, or of the death, marriage, lunacy, unsoundness of mind, or bankruptcy of the donor of the power within that fixed time.

(2.) This section applies only to powers of attorney created by instruments executed after the commencement of this Act.

Executory Limitations.

Executory Limitations.

Restriction on executory limitations.

10.—(1.) Where there is a person entitled to land for an estate in fee, or for a term of years absolute or determinable on life, or for term of life, with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period or time or not, that executory limitation shall be or become void and incapable of taking effect, if and as soon as there is living any issue who has attained the age of twenty-one years, of the class on default or failure whereof the limitation over was to take effect (*a*).

(2.) This section applies only where the executory limitation is contained in an instrument coming into operation after the commencement of this Act.

Long Terms.

Long Terms.

Amendment of enactment respecting long terms (*b*).

11. Section sixty-five of the Conveyancing Act of 1881 shall apply to and include, and shall be deemed to have always applied to and included, every such term as in that section mentioned,

(*a*) A declaration in accordance with this section seems to have been made in *Re Booth*, [1900] 1 Ch. 768. "Entitled" includes an equitable title. *Re Shrubb* (1910), W. N. 143.

(*b*) See *supra*, pp. 77—79.

45 & 46 Vict. c. 39.

whether having as the immediate reversion thereon the freehold or not; but not—

(i.) Any term liable to be determined by re-entry for condition broken; or

(ii.) Any term created by sub-demise out of a superior term, itself incapable of being enlarged into a fee simple.

Mortgages.

Mortgages.

Reconveyance on mortgage (*a*).

12. The right of the mortgagor, under section fifteen of the Conveyancing Act of 1881, to require a mortgagee, instead of re-conveying, to assign the mortgage debt and convey the mortgaged property to a third person, shall belong to and be capable of being enforced by each incumbrancer, or by the mortgagor, notwithstanding any intermediate incumbrance; but a requisition of an incumbrancer shall prevail over a requisition of the mortgagor, and, as between incumbrancers, a requisition of a prior incumbrancer shall prevail over a requisition of a subsequent incumbrancer.

Saving.

Saving.

Restriction on repeals in this Act.

13. *The repeal by this Act of any enactment shall not affect any right accrued or obligation incurred thereunder before the commencement of this Act; nor shall the same affect the validity or invalidity, or any operation, effect, or consequence, of any instrument executed or made, or of anything done or suffered, before the commencement of this Act; nor shall the same affect any action, proceeding, or thing then pending or uncompleted; and every such action, proceeding, and thing may be carried on and completed as if there had been no such repeal in this Act* (*b*).

(*a*) See *supra*, pp. 39, 40.

(*b*) As to the meaning of the words "right accrued," see *Abbott* v. *Minister for Lands*, [1895] A. C. 425. The section has been repealed by the Statute Law Revision Act, 1898.

SCHEDULE (*a*).

REPEALS.

45 & 46 VICT. c. 39.

Section 7 (4).

3 & 4 *Will. IV. c.* 74 . . . *in part.*	*The Fines and Recoveries Act* . . } *in part; namely,—* *Section eighty-four, from and including the words "and the same judge," to the end of that section.* *Sections eighty-five to eighty-eight, inclusive.*
4 & 5 *Will. IV. c.* 92 . . . *in part.*	*The Fines and Recoveries (Ireland) Act* . . . } *in part; namely,—* *Section seventy-five, from and including the words "and the same judge," to the end of that section.* *Sections seventy-six to seventy-nine, inclusive.*
17 & 18 *Vict. c.* 75	*An Act to remove doubts concerning the due acknowledgments of deeds by married women in certain cases.*
41 & 42 *Vict. c.* 23	*The acknowledgment of deeds by Married Women (Ireland), Act*, 1878.

(*a*) The Schedule has been repealed by the Statute Law Revision Act, 1898.

APPENDIX VI.

55 & 56 Vict. c. 13.

55 & 56 VICT. CAP. 13.

AN ACT TO AMEND THE CONVEYANCING AND LAW OF PROPERTY ACT, 1881.

[20*th June*, 1892.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by authority of the same as follows :—

Preliminary.

Short title and extent. 44 & 45 Vict. c. 41. 45 & 46 Vict. c. 39.

1.—(1.) This Act may be cited as the Conveyancing and Law of Property Act, 1892, and the Conveyancing and Law of Property Act, 1881, and the Conveyancing Act, 1882, and this Act shall be read together and may be cited together as the Conveyancing Acts, 1881, 1882, and 1892 (*a*).

(2.) This Act does not extend to Scotland.

Leases, Under-leases, Forfeiture.

Costs of waiver, and forfeiture in case of bankruptcy or execution (*b*).

2.—(1.) A lessor shall be entitled to recover as a debt due to him from a lessee, and in addition to damages (if any) all reasonable costs and expenses properly incurred by the lessor in the employment of a solicitor and surveyor or valuer, or otherwise, in reference to any breach giving rise to a right of re-entry or forfeiture which, at the request of the lessee, is waived by the lessor by writing under his hand, or from which the lessee is relieved, under the provisions of the Conveyancing and Law of Property Act, 1881, or of this Act.

(2.) Sub-section six of section fourteen of the Conveyancing and Law of Property Act, 1881, is to apply to a condition for forfeiture on bankruptcy of the lessee, or on taking in execution of the lessee's

(*a*) See p. 772, *supra*, note (*c*).
(*b*) See *supra*, pp. 35—38 ; and Conv. Act, 1881 (App. IV., *supra*), s. 14.

interest only after the expiration of one year from the date of the bankruptcy, or taking in execution, and provided the lessee's interest be not sold within such one year, but in case the lessee's interest be sold within such one year, sub-section six shall cease to be applicable thereto. 55 & 56 Vict. c. 13.

(3.) Sub-section two of this section is not to apply to any lease of—

(*a.*) Agricultural or pastoral land:

(*b.*) Mines or minerals:

(*c.*) A house used or intended to be used as a public-house or beershop:

(*d.*) A house let as a dwelling-house, with the use of any furniture, books, works of art, or other chattels, not being in the nature of fixtures:

(*e.*) Any property with respect to which the personal qualifications of the tenant are of importance for the preservation of the value or character of the property, or on the ground of neighbourhood to the lessor, or to any person holding under him.

No fine to be exacted for licence to assign (*a*).

3. In all leases containing a covenant, condition, or agreement against assigning, underletting, or parting with the possession, or disposing of the land or property leased without licence or consent, such covenant, condition, or agreement shall, unless the lease contains an expressed provision to the contrary, be deemed to be subject to a proviso to the effect that no fine or sum of money in the nature of a fine shall be payable for or in respect of such licence or consent: but this proviso shall not preclude the right to require the payment of a reasonable sum in respect of any legal or other expense incurred in relation to such licence or consent.

Power of Court to protect under-lessees on forfeiture of superior leases (*b*).

4. Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso, or stipulation in a lease, the Court may, on application by any person claiming as under-lessee any estate or interest in the property comprised in the lease or any part thereof either in the lessor's action (if any) or in any action brought by such person for that purpose, make an order vesting for the whole term of the lease or any less term the property comprised in the lease or any part thereof in any person entitled as under-lessee to any estate or interest in such property upon such conditions, as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security, or otherwise, as the Court in the circumstances of

(*a*) See *supra*, p. 36.

(*b*) See *supra*, p. 35.

55 & 56 Vict. c. 13.

each case shall think fit, but in no case shall any such under-lessee be entitled to require a lease to be granted to him for any longer term than he had under his original sub-lease.

Extension of definitions of "lease," "under-lease," and "under-lessee."

5. In section fourteen of the Conveyancing and Law of Property Act, 1881, as amended by this Act, and in this Act, "lease" shall also include an agreement for a lease where the lessee has become entitled to have his lease granted, and "under-lease" shall also include an agreement for an under-lease where the under-lessee has become entitled to have his under-lease granted, and in this Act "under-lessee" shall include any person deriving title under or from an under-lessee.

Trustees.

Trustees may be appointed for separate parts of property though no new trustee be appointed of other parts.

[6. *A separate set of trustees or a separate trustee may be appointed under the fifth section of the Conveyancing Act*, 1882, *of a part only of the trust property, notwithstanding that no new trustees or trustee are to be appointed of other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees; and every appointment already made of a separate set of trustees shall be valid notwithstanding that there was no retiring trustee of other parts of the trust property, and that no new trustees were appointed of such other parts thereof* (*a*).]

(*a*) Repealed by the Trustee Act, 1893. See sect. 10, sub-sect. 2 (6), of that Act (App. XVI., *infra*) for the existing law relating to the appointment of separate trustees.

APPENDIX VII.

45 & 46 VICT. CAP. 38 (*a*).

45 & 46 VICT. c. 38.

AN ACT FOR FACILITATING SALES, LEASES, AND OTHER DISPOSITIONS OF SETTLED LAND AND FOR PROMOTING THE EXECUTION OF IMPROVEMENTS THEREON.

[10*th August*, 1882.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I.—PRELIMINARY.

PRELIMINARY.

Short title; commencement; extent.

1.—(1.) This Act may be cited as the Settled Land Act, 1882.

(2.) This Act, except where it is otherwise expressed, shall commence and take effect from and immediately after the thirty-first day of December, one thousand eight hundred and eighty-two, which time is in this Act referred to as the commencement of this Act.

(3.) This Act does not extend to Scotland.

II.—DEFINITIONS.

DEFINITIONS.

Definition of settlement, tenant for life, &c.

2.—(1.) Any deed, will, agreement for a settlement, or other agreement, covenant to surrender, copy of court roll, Act of Parliament (*b*), or other instrument, or any number of instruments (*c*),

(*a*) A summary of the provisions of this Act and the amending Acts is given *supra*, p. 160, note (*b*).

(*b*) See *Re Chaytor's S. E.*, 25 Ch. D. 651. The Act need not be a private Act: *Vine* v. *Raleigh*, [1896] 1 Ch. 37, where a settlement was held to be constituted by the joint operation of the Thellusson Act and a will.

(*c*) See sect. 58 (2), *infra*, and sect. 4 of the Act of 1890 (App. XI., *infra*), and cf. the definition in the Settled Estates Act, 1877. In *Re Marquis of Ailesbury and Lord Iveagh*, [1893] 2 Ch. 345, the Marquis was tenant for life under a settlement made in the year 1885, subject to three

45 & 46 Vict c. 38.

whether made or passed before or after, or partly before and partly after, the commencement of this Act, under or by virtue of which instrument or instruments any land, or any estate or interest in land, stands for the time being limited to or in trust for any persons

jointures, of which one was created by the last preceding settlement, and might perhaps have been overreached, according to the understanding of conveyancers, by the exercise of a power of sale contained in the settlement of 1885, and the others were created by earlier and wholly disconnected settlements, and could not have been so overreached. But the several settlements referred to were held to constitute one settlement, and trustees for purposes of the Act were appointed of all of them, and a sale by the Marquis as tenant for life under the settlement so constituted was held good, and it was decided that he could convey to the purchaser discharged from all the jointures. The decision was a surprise to the profession, and has been much canvassed, but it has been approved by the Court of Appeal in *Re Mundy and Roper's Contract*, [1889] 1 Ch. 275; see also *Re Phillimore's Estate*, [1904] 2 Ch. 460; *Re Marshall's Settlement*, [1905] 2 Ch. 325. As stated in *Re Mundy and Roper's Contract*, there may at one and the same time be in existence more and less comprehensive settlements of the same land, each of which may be complete in itself for some purposes, although all or some of them may be treated as constituting together one compound settlement for other and wider purposes. See also *Re Lord Wimborne and Browne's Contract*, [1904] 1 Ch. 537. As to the appointment of trustees, for the purposes of the Acts, of a compound settlement, see *Re Spencer's S. E.*, [1903] 1 Ch. 75; *Re Coull's S. E.*, [1905] 1 Ch. 712; *Re Spearman's S. E.*, [1906] 2 Ch. 502. Where upon a resettlement a life estate was limited to A. in restoration of his former life estate under a will not containing a power of sale, and trustees for purposes of the Settled Land Acts were appointed of the resettlement, it was held by Farwell, J., in *Re Cornwallis and Munro's Contract*, [1903] 2 Ch. 150 (explained in *Re Lord Wimborne and Browne's Contract*, [1904] 1 Ch. 537), that the life estate under the original settlement was the life estate in existence, and that the only settlement under which A. could exercise his statutory power of sale was the compound settlement, of which it was therefore necessary that trustees for the purposes of the Acts should be appointed. The decision is in conflict with the previous understanding of conveyancers as to the effect in a resettlement of words purporting to restore a former life estate. See Davidson, Prec. Conv. III. 596, 3rd edition; *Re Mundy and Roper's Contract*, [1899] 1 Ch. 275 at p. 294; and see note (*a*) at p. 582, *supra*. Where by a will real estate was devised to the trustees of a prior settlement to the uses declared by the settlement concerning the land comprised therein, and personal estate was bequeathed upon trust for investment in the purchase of land to be settled to the same uses as the devised land, it was held that the settlement and will constituted one settlement under this subsection: *Re Mundy's S. E.*, [1891] 1 Ch. 399. And the principle of this decision has been applied where the limitations of the one instrument were not declared by reference to those of the other, but each set of limitations was stated independently and there were some differences between them: *Re Byng's S. E.*, [1892] 2 Ch. 219; and see *Lord Monson's S. E.*, [1898] 1 Ch. 427; *Re Coull's S. E.*, *ubi supra*. When a complete settlement has been made, and a derivative or sub-settlement has been afterwards made, the former, or original settlement, alone, is the settlement for purposes of the Act: *Re Knowles' S. E.*, 27 Ch. D. 707; *Re Du Cane and Nettlefold's Contract*, [1898] 2 Ch. 96.

by way of succession (*a*), creates or is for purposes of this Act a settlement, and is in this Act referred to as a settlement, or as the settlement, as the case requires (*b*).

(2.) An estate or interest in remainder or reversion not disposed of by a settlement, and reverting to the settlor or descending to the testator's heir, is for purposes of this Act an estate or interest coming to the settlor or heir under or by virtue of the settlement, and comprised in the subject of the settlement (*c*).

(3.) Land, and any estate or interest therein, which is the subject of a settlement, is for purposes of this Act settled land, and is, in relation to the settlement, referred to in this Act as the settled land.

(4.) The determination of the question whether land is settled land, for purposes of this Act, or not, is governed by the state of facts, and the limitations of the settlement, at the time of the settlement taking effect.

(5.) The person who is for the time being under a settlement, beneficially entitled to possession (*d*) of settled land, for his life, is for purposes of this Act the tenant for life of that land, and the tenant for life under that settlement.

(6.) If in any case there are two or more persons so entitled (*e*)

(*a*) See *A.-G.* v. *Fairley*, [1897] 1 Q. B. 698; *Re Pocock and Prankerd's Contract*, [1896] 1 Ch. 302: *Lord Advocate* v. *Stewart*, [1899] W. N. 198; *A.-G.* v. *Clarkson*, *ibid.* 232; *Re Campbell*, [1902] 1 K. B. 113; and *Re Child's Settlement*, [1907] 2 Ch. 348, where land had been purchased under a power in a settlement of personalty, and it was held that until sale of the land there was a settlement under this sub-section, and also that the case was within sect. 63. The Act, however, does not apply to ecclesiastical property: *Ex parte Vicar of Castle Bytham*, [1895] 1 Ch. 348; *Re Bishop of Bath and Wells*, [1899] 2 Ch. 138.

(*b*) Precedents CXXXVIII. and CXXXIX. are specimens of deeds, and Precedents CLIII. and CLIV. are specimens of wills, creating a settlement as here defined; and some practical observations on the form which such instruments should now take will be found in the notes to those Precedents.

(*c*) See *Re Hunter and Hewlett's Contract*, [1907] 1 Ch. 46; *Re Llanover*, *ibid.* 635.

(*d*) *I.e.*, as distinguished from reversion, *Re Atkinson*, 31 Ch. D. 577; and see also *Re Clitheroe Estate*, 31 Ch. D. 135; *Re Strangways*, 34 Ch. D. 123; *Re Atherton*, [1891] W. N. 85; *Williams* v. *Jenkins*, [1893] 1 Ch. 700; *Re Edwards' Settlement*, [1897] 2 Ch. 412; *Re De Hoghton*, [1896] 1 Ch. 855, in which *Re Clitheroe* was discussed. "Possession" includes receipt of income, see sub-sect. 10. As to persons who have the powers of a tenant for life, see sect. 58; as to infants, sects. 59 and 60; married women, sect. 61; and lunatics, sect. 62.

(*e*) *I.e.*, having life estates within sub-sect. 5; *Re Atkinson*, 31 Ch. D. 577; *Re Collinge's S. E.*, 36 Ch. D. 516. In the former case it was held that under a discretionary trust to pay income to A. or B., they do not together constitute a tenant for life; in the latter that the tenant for life of an undivided moiety, where the other had ceased to be settled

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as tenants in common, or as joint tenants, or for other concurrent estates or interests, they together constitute the tenant for life for purposes of this Act.

(7.) A person being tenant for life within the foregoing definitions shall be deemed to be such notwithstanding that, under the settlement or otherwise, the settled land, or his estate or interest therein, is incumbered or charged in any manner or to any extent (*a*).

(8.) The persons, if any, who are for the time being, under a settlement, trustees with power of sale (*b*) of settled land, or with power of consent to or approval of the exercise of such a power of sale, or if under a settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Act, are for purposes of this Act trustees of the settlement.

(9.) Capital money arising under this Act, and receivable for the trusts and purposes of the settlement, is in this Act referred to as capital money arising under this Act (*c*).

(10.) In this Act—

(i.) Land includes incorporeal hereditaments (*d*), also an un-

land, could not sell without the concurrence of the owner of that other moiety; but this case has been overruled by *Cooper* v. *Belsey*, [1899] 1 Ch. 639. In *Smith* v. *Lancaster*, [1894] 3 Ch. 439, where twenty-five persons together constituted the tenant for life, it was held that they were not bound to employ and act by the same solicitor upon a sale of the settled land, and the costs of such of them as employed separate solicitors to peruse the conveyance on their behalf were allowed out of the proceeds of sale.

(*a*) See *Re Jones*, 26 Ch. D. 736, where the incumbrances were so heavy that the tenant for life had received nothing, and was not likely to receive anything for many years; and *Re Pollock*, [1906] 1 Ch. 146, where the interest of the tenant for life was charged with the maintenance of her children. But the section does not apply where there is a trust for accumulation of the whole income for a period, *Re Strangways*, 34 Ch. D. 423.

(*b*) *I.e.*, a present power, *Wheelwright* v. *Walker*, 23 Ch. D. 752; but not necessarily an express power. *Re Garnett-Orme & Hargreaves' Contract*, 25 Ch. D. 595; and it may be exerciseable only with consent; *Constable* v. *Constable*, 32 Ch. D. 233. But the power must be a general one, not merely exerciseable in a contingency, or for a limited purpose, such as the payment of debts. *Re Coull's S. E.*, [1905] 1 Ch. 712. Cf. cases cited upon sect. 63, *infra*. As to who are to be trustees of the settlement for the purposes of the Settled Land Acts when there are for the time being no trustees of the settlement within the meaning and for the purposes of this Act, see S. L. Act, 1890, s. 16, *infra*, App. XI. As to surviving or continuing trustees, see sect. 39 (2).

(*c*) See notes to sect. 21, *infra*; S. L. A. 1884, s. 4, *infra*, App. VIII.; S. L. A. 1889, s. 3, *infra*, App. X.

(*d*) Including for purposes of sect. 37, a dignity; *Re Sir J. R. Carnac's Will*, 30 Ch. D. 136. See also *Re Earl of Aylesford's S. E.*, 32 Ch. D.

divided share (*a*) in land; income includes rents and profits; and possession includes the receipt of income:

(ii.) Rent includes yearly or other rent, and toll, duty, royalty, or other reservation, by the acre, or the ton, or otherwise; and, in relation to rent, payment includes delivery; and fine includes premium or fore-gift, and any payment, consideration, or benefit in the nature of a fine, premium, or fore-gift:

(iii.) Building purposes (*b*) include the erecting and the improving of, and the adding to, and the repairing of buildings; and a building lease is a lease for any building purposes or purposes connected therewith (*c*).

(iv.) Mines and minerals mean mines and minerals whether already opened or in work or not, and include all minerals and substances, in, on, or under the land, obtainable by underground or by surface working; and mining purposes include the sinking and searching for, winning, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away, and disposing of mines and minerals, in or under the settled land or any other land, and the erection of buildings, and the execution of engineering and other works, suitable for those purposes; and a mining lease is a lease for any mining purposes or purposes connected therewith, and includes a grant or licence for any mining purposes (*c*):

(v.) Manor includes lordship, and reputed manor or lordship:

(vi.) Steward includes deputy steward, or other proper officer, of a manor:

(vii.) Will includes codicil, and other testamentary instrument, and a writing in the nature of a will:

(viii.) Securities include stocks, funds, and shares:

(ix.) Her Majesty's High Court of Justice is referred to as the Court:

162; as to tithes, *Re Esdaile*, W. N. 1886, 47; 54 L. T. 637; as to easements enjoyed with the settled land, *Re Brotherton*, [1907] W. N. 230; [1908] W. N. 56.

(*a*) As to an undivided share, see *Re Wells*, 31 W. R. 764; *Re James*, 32 W. R. 898; *Williams* v. *Jenkins*, [1894] W. N. 176; and *Cooper* v. *Belsey*, [1899] 1 Ch. 639; and cf. sect. 19.

(*b*) See *Re Earl of Ellesmere*, [1898] W. N. 18; and cf. *Re Daniell's S. E.*, [1894] 3 Ch. 503.

(*c*) As to building and mining leases, see sects. 8—11 and notes thereto, *infra*.

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(x.) The Land Commissioners for England as constituted by this Act are referred to as the Land Commissioners (*a*):

(xi.) Person includes corporation.

SALE; ENFRANCHISEMENT; EXCHANGE; PARTITION.

General Powers and Regulations.

Powers to tenant for life to sell, &c.

III.—SALE; ENFRANCHISEMENT; EXCHANGE; PARTITION (*b*).

General Powers and Regulations.

3. A tenant for life—

(i.) May sell the settled land, or any part thereof, or any easement, right, or privilege of any kind, over or in relation to the same (*c*); and

(ii.) Where the settlement comprises a manor,—may sell the seigniory of any freehold land within the manor, or the freehold and inheritance of any copyhold or customary land, parcel of the manor, with or without any exception or reservation of all or any mines or minerals, or of any rights or powers relative to mining purposes, so as in every such case to effect an enfranchisement; and

(iii.) May make an exchange of the settled land, or any part thereof, for other land, including an exchange in con-

(*a*) The powers of the Land Commissioners were, by 52 & 53 Vict. c. 30, transferred to the Board of Agriculture (now styled the Board of Agriculture and Fisheries; see 3 Edw. 7, c. 31).

(*b*) See as to the powers given by this part of the Act, *supra*, p. 160, note (*b*). By the S. L. Act, 1890, s. 12 (App. XI., *infra*), provision is made for dealings as between the tenant for life and the estate. Note that the provisions of this Act as to sale by a tenant for life are, so far as circumstances will admit, to apply to a sale of glebe land under the Glebe Lands Act, 1888 (51 & 52 Vict. c. 20); see sect. 8 (4). In *Re Bryant, &c.*, 44 Ch. D. 218, trustees having entered into a contract for sale, which they had no power to do, attempted to force the purchaser to take a title from the tenant for life under this Act, *i.e.*, to enter into a new contract with a stranger; but the attempt was unsuccessful; see also *Re Head's Trustees and Macdonald*, 45 Ch. D. 310; *Re Baker and Selmon's Contract*, [1907] 1 Ch. 238, where, however, the sale was in effect by the beneficiaries.

(*c*) This power may be exercised notwithstanding that the reversion was sold before the passing of the Act, *Wheelwright* v. *Walker*, 23 Ch. D. 752; and notwithstanding the pendency of an adverse action, *Cardigan* v. *Curzon-Howe*, 30 Ch. D. 531; *Hampden* v. *Earl of Buckinghamshire*, [1893] 2 Ch. 531. As to cases where an order has been made under the S. Est. Act, 1877, see *Re Barrs-Haden's S. E.*, W. N. 1883, p. 188; 32 W. R. 194; and cf. sect. 58, *infra*. It has been doubted whether a sale can be made subject to terminable charges, *Re Knatchbull's S. E.*, 27 Ch. D. 349, 352; on appeal, 29 Ch. D. 588; which, however, so far as respects land drainage charges, has been overruled by the Settled Land Act, 1887; *infra*, App. IX. *Semble*, the exercise of his statutory powers by the tenant for life is good as against the Crown: *Re Bond*, [1901] 1 Ch. 15.

sideration of money paid for equality of exchange (*a*); and 45 & 46 Vict. c. 38.

(iv.) Where the settlement comprises an undivided share in land, or, under the settlement, the settled land has come to be held in undivided shares,—may concur in making partition of the entirety, including a partition in consideration of money paid for equality of partition.

Regulations respecting sale, enfranchisement, exchange, and partition.

4.—(1.) Every sale shall be made at the best price that can reasonably be obtained (*b*).

(2.) Every exchange and every partition shall be made for the best consideration in land or in land and money that can reasonably be obtained.

(3.) A sale may be made in one lot or in several lots, and either by auction or by private contract.

(4.) On a sale the tenant for life may fix reserve biddings and buy in at an auction.

(5.) A sale, exchange, or partition may be made subject to any stipulations respecting title, or evidence of title, or other things.

(6.) On a sale, exchange, or partition, any restriction or reservation with respect to building on or other user of land, or with respect to mines and minerals, or with respect to or for the purpose of the more beneficial working thereof, or with respect to any other thing, may be imposed or reserved and made binding, as far as the law permits, by covenant, condition, or otherwise, on the tenant for life and the settled land, or any part thereof, or on the other party, and any land sold or given in exchange or on partition to him.

(7.) An enfranchisement may be made with or without a re-grant of any right of common or other right, easement, or privilege theretofore appendant or appurtenant to or held or enjoyed with the land enfranchised, or reputed so to be.

(8.) Settled land in England shall not be given in exchange for land out of England.

(*a*) As to granting and reserving easements on an exchange or partition, see S. L. Act, 1890, s. 5, *infra*, App. XI.

(*b*) The price, of course, must not be left to be fixed by arbitration (*Re Earl of Wilton's S. E.*, [1907] 1 Ch. 50), but this can hardly apply to a stipulation that the purchaser shall take timber or fixtures at a valuation. See as to sales for working-class dwellings, S. L. Act, 1890, s. 18 (App. XI., *infra*), and the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), s. 74. And see also the Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), s. 40 (4). Sect. 9 of the S. L. Act, 1890, apparently gives power to reserve a rentcharge on a grant in fee simple for building purposes. And see the Small Holdings and Allotments Act, 1908, s. 40 (5).

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Special Powers.

Transfer of incumbrances on land sold, &c.

Special Powers.

5. Where on a sale, exchange, or partition there is an incumbrance affecting land sold or given in exchange or on partition, the tenant for life, with the consent of the incumbrancer, may charge that incumbrance on any other part of the settled land, whether already charged therewith or not, in exoneration of the part sold or so given, and, by conveyance of the fee simple, or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or otherwise, make provision accordingly (*a*).

LEASES.

IV.—Leases (*b*).

General Powers and Regulations.

Power for tenant for life to lease for ordinary or building or mining purposes.

6. A tenant for life may lease the settled land, or any part thereof, or any easement, right, or privilege of any kind, over or in relation to the same, for any purpose whatever, whether involving waste or not, for any term not exceeding—

(i.) In case of a building lease, ninety-nine years:

(ii.) In case of a mining lease, sixty years:

(iii.) In case of any other lease, twenty-one years.

Regulations respecting leases generally.

7.—(1.) Every lease shall be by deed (*c*), and be made to take effect in possession not later than twelve months after its date.

(2.) Every lease shall reserve the best rent (*d*) that can reasonably be obtained, regard being had to any fine (*e*) taken, and to any

(*a*) See *Re Lord Stamford's S. E.*, 43 Ch. D. 84. "Incumbrance" includes a rentcharge created under the Improvement of Land Act, 1864, *Re Earl of Strafford and Maples*, [1896] 1 Ch. 235. By sect. 11 of the S. L. Act, 1890 (App. XI., *infra*), a tenant for life is empowered to mortgage the settled land for the purpose of discharging an incumbrance affecting the land or any part thereof.

(*b*) See as to the powers given by this part of the Act, *supra*, p. 427, note (*c*). As to the principles by which a tenant for life ought to be guided in exercising his leasing powers, see *Dowager Duchess of Sutherland* v. *Duke of Sutherland*, [1893] 3 Ch. 169. As to notice to the trustees, see sect. 45 and notes thereto. The sect. authorizes a lease of the surface of the settled land, reserving the minerals, and *vice versâ*, *Re Gladstone*, [1900] 2 Ch. 101; *Re Duke of Rutland's S. E.*, *ib.* 206; and a lease with a right to let down the surface, *Sitwell* v. *Earl of Londesborough*, [1905] 1 Ch. 460.

(*c*) Where the term does not exceed three years a writing is sufficient, see S. L. Act, 1890 (App. XI., *infra*), s. 7.

(*d*) See *Chandler* v. *Bradley*, [1897] 1 Ch. 315, where the tenant for life had received a sum from the lessee as an inducement to execute the lease, which was, in consequence, declared void as against the beneficiaries; *Re Handman and Wilcox's Contract*, [1902] 1 Ch. 599; and *Boyce* v. *Edbrooke*, [1903] 1 Ch. 836, where a tenant for life had granted a lease to himself and others, which was held bad.

(*e*) See the Settled Land Act, 1884 (App. VIII., *infra*), s. 4. As to

money laid out (*a*) or to be laid out for the benefit of the settled land, and generally to the circumstances of the case.

(3.) Every lease shall contain a covenant by the lessee (*b*) for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days.

(4.) A counterpart of every lease shall be executed by the lessee and delivered to the tenant for life; of which execution and delivery the execution of the lease by the tenant for life shall be sufficient evidence.

(5.) A statement, contained in a lease or in an indorsement thereon, signed by the tenant for life, respecting any matter of fact or of calculation under this Act in relation to the lease, shall, in favour of the lessee and of those claiming under him, be sufficient evidence of the matter stated.

Building and Mining Leases.

Building and Mining Leases.

Regulations respecting building leases.

8.—(1.) Every building lease shall be made partly in consideration of the lessee, or some person by whose direction the lease is granted, or some other person, having erected, or agreeing to erect, buildings, new or additional, or having improved or repaired, or agreeing to improve or repair, buildings, or having executed, or agreeing to execute, on the land leased, an improvement authorised by this Act, for or in connexion with building purposes (*c*).

leases for working-class dwellings, see S. L. Act, 1890, s. 18; 53 & 54 Vict. c. 70, s. 74. See also the Small Holdings and Allotments Act, 1908, s. 40 (4), as to leases for the purposes of that Act.

(*a*) The words "money laid out" mean money laid out for the benefit of the settled land with direct reference to the grant of the lease, and do not include past voluntary expenditure, *Re Chawner's S. E.*, [1892] 2 Ch. 192.

(*b*) It was argued in *Dowager Duchess of Sutherland* v. *Duke of Sutherland* (*ubi supra*), that a tenant for life cannot grant a lease under the Act to a married woman on the ground that a married woman cannot covenant: but the point was not decided.

(*c*) See sect. 2, sub-sect. 10 (iii.); and see S. L. Act, 1889 (App. X.), enabling an option to purchase to be inserted in building leases or agreements for such leases. As to what is a building lease, see *Re Sabin's S. E.*, W. N. 1885, p. 197. See also *Ayling* v. *Mercer*, W. N. 1885, p. 166; *Re Daniell's S. E.*, [1894] 3 Ch. 503; *Re Earl of Ellesmere*, [1898] W. N. 18. The Court refused its sanction to the proposed lease in *Re Daniell's S. E.*, on the ground that the improvements and repairs to be done by the lessee were such as ought to be done by the tenant for life. The words "in consideration" are to be read as importing a consideration in law, and a past voluntary expenditure is not such a consideration, *Re Chawner's S. E.*, [1892] 2 Ch. 192.

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(2.) A peppercorn rent or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years or any less part of the term.

(3.) Where the land is contracted to be leased in lots, the entire amount of rent to be ultimately payable may be apportioned among the lots in any manner; save that—

(i.) The annual rent reserved by any lease shall not be less than ten shillings; and

(ii.) The total amount of the rents reserved on all leases for the time being granted shall not be less than the total amount of the rents which, in order that the leases may be in conformity with this Act, ought to be reserved in respect of the whole land for the time being leased; and

(iii.) The rent reserved by any lease shall not exceed one-fifth part of the full annual value of the land comprised in that lease with the buildings thereon when completed.

Regulations respecting mining leases.

9.—(1.) In a mining lease (*a*)—

(i.) The rent may be made to be ascertainable by or to vary according to the acreage worked, or by or according to the quantities of any mineral or substance gotten, made merchantable, converted, carried away, or disposed of, in or from the settled land, or any other land, or by or according to any facilities given in that behalf (*b*); and

(ii.) A fixed or minimum rent may be made payable, with or without power for the lessee, in case the rent, according to acreage or quantity, in any specified period does not produce an amount equal to the fixed or minimum rent, to make up the deficiency in any subsequent specified period, free of rent other than the fixed or minimum rent (*c*).

(2.) A lease may be made partly in consideration of the lessee having executed, or his agreeing to execute, on the land leased, an improvement authorised by this Act, for or in connexion with mining purposes.

Variation of building or mining lease according to circumstances of district.

10.—(1.) Where it is shown to the Court with respect to the district in which any settled land is situate, either—

(i.) That it is the custom for land therein to be leased or granted for building or mining purposes for a longer

(*a*) See sect. 2, sub-sect. 10 (iv.).

(*b*) See S. L. Act, 1890 (App. XI., *infra*), s. 8; and *Earl of Lonsdale* v. *Lowther*, [1900] 2 Ch. 687; *Re Aldam's S. E.*, [1902] 2 Ch. 46.

(*c*) *Re Aldam's S. E.*, *ibid.*

term or on other conditions than the term or conditions specified in that behalf in this Act, or in perpetuity; or

(ii.) That it is difficult to make leases or grants for building or mining purposes of land therein, except for a longer term or on other conditions than the term and conditions specified in that behalf in this Act, or except in perpetuity;

the Court may, if it thinks fit, authorise generally (*a*) the tenant for life to make from time to time leases or grants of or affecting the settled land in that district, or parts thereof, for any term or in perpetuity, at fee-farm or other rents, secured by condition of re-entry, or otherwise, as in the order of the Court expressed, or may, if it thinks fit, authorise the tenant for life to make any such lease or grant in any particular case (*b*).

(2.) Thereupon the tenant for life, and, subject to any direction in the order of the Court to the contrary, each of his successors in title being a tenant for life, or having the powers of a tenant for life under this Act, may make in any case, or in the particular case, a lease or grant of or affecting the settled land, or part thereof, in conformity with the order.

Part of mining rent to be set aside as capital.

11. Under a mining lease, whether the mines or minerals leased are already opened or in work or not, unless a contrary intention is expressed in the settlement (*c*), there shall be from time to time set aside, as capital money arising under this Act, part of the rent as follows, namely,—where the tenant for life is impeachable for waste (*d*) in respect of minerals, three-fourth parts of the rent, and

(*a*) See *Cecil* v. *Langdon*, 51 L. T. 618, where there being a tenant in tail in possession aged 18, general authority to the trustees to grant long leases was refused.

(*b*) By the S. L. Act, 1890 (App. XI., *infra*), s. 9, a tenant for life is apparently authorised to make a grant in fee simple for building purposes in consideration of a perpetual rentcharge. And by the Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), sales, exchanges, or leases of settled land to a county council for the purposes of small holdings may be made by a tenant for life at such a price, or for such consideration, or at such rent as having regard to such purposes and to all the circumstances of the case is the best that can be reasonably obtained: and grants may be made for such purposes in perpetuity at a fee-farm or other rent secured by a condition of re-entry or otherwise. (Sect. 40 (4) and (5).)

(*c*) As to what is such a contrary intention, see *Re Duke of Newcastle's Estates*, 24 Ch. D. 129.

(*d*) See *Re Ridge, Hellard* v. *Moody*, 31 Ch. D. 504, where, in a case within sect. 63, it was held that, though the tenant for life was not, properly speaking, "impeachable for waste," yet three-quarters of the rents and royalties must be set aside as capital monies. But see *Re Chaytor*, [1900] 2 Ch. 804, where the construction of the section is discussed.

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otherwise one-fourth part thereof, and in every such case the residue of the rent shall go as rents and profits (*a*).

Special Powers.

Leasing powers for special objects.

Special Powers.

12. The leasing power of a tenant for life extends to the making of—

(i.) A lease for giving effect to a contract entered into by any of his predecessors in title for making a lease, which, if made by the predecessor, would have been binding on the successors in title (*b*); and

(ii.) A lease for giving effect to a covenant of renewal, performance whereof could be enforced against the owner for the time being of the settled land (*c*); and

(iii.) A lease for confirming, as far as may be, a previous lease, being void or voidable; but so that every lease, as and when confirmed, shall be such a lease as might at the date of the original lease have been lawfully granted, under this Act, or otherwise, as the case may require.

Surrenders.

Surrender and new grant of leases.

Surrenders (d).

13.—(1.) A tenant for life may accept, with or without consideration, a surrender of any lease of settled land, whether made under this Act or not, in respect of the whole land leased, or any part thereof, with or without an exception of all or any of the mines and minerals therein, or in respect of mines and minerals, or any of them.

(2.) On a surrender of a lease in respect of part only of the land or mines and minerals leased, the rent may be apportioned.

(3.) On a surrender, the tenant for life may make of the land or mines and minerals surrendered, or of any part thereof, a new or other lease, or new or other leases in lots.

(*a*) This section does not apply to a mining lease granted by a tenant for life to give effect to a contract entered into by a predecessor who was absolute owner: *Re Kemeys-Tynte*, [1892] 2 Ch. 211.

(*b*) See sect. 31, and *Davis* v. *Harford*, 22 Ch. D. 128, as to the exercise, before the Act, of a leasing power for giving effect to such a contract.

(*c*) See *Gas Light and Coke Co.* v. *Towse*, 35 Ch. D. 519.

(*d*) As to surrender of leases, see Settled Estates Act, 1877, s. 7. Money *bonâ fide* received by the tenant for life as the consideration for accepting the lease cannot be retained by him, but must be apportioned between him and the remaindermen: *Re Rhodes*, [1909] 1 Ch. 815, distinguishing *Re Hunloke's S. E.*, [1902] 1 Ch. 941, a case not under the Act.

(4.) A new or other lease may comprise additional land or mines and minerals, and may reserve any apportioned or other rent. 45 & 46 VICT. c. 38.

(5.) On a surrender, and the making of a new or other lease, whether for the same or for any extended or other term, and whether or not subject to the same or to any other covenants, provisions, or conditions, the value of the lessee's interest in the lease surrendered may be taken into account in the determination of the amount of the rent to be reserved, and of any fine to be taken, and of the nature of the covenants, provisions, and conditions to be inserted in the new or other lease.

(6.) Every new or other lease shall be in conformity with this Act.

Copyholds. *Copyholds.*

Power to grant to copyholders licences for leasing.

14.—(1.) A tenant for life may grant to a tenant of copyhold or customary land, parcel of a manor comprised in the settlement, a licence to make any such lease of that land, or of a specified part thereof, as the tenant for life is by this Act empowered to make of freehold land.

(2.) The licence may fix the annual value whereon fines, fees, or other customary payments are to be assessed, or the amount of those fines, fees, or payments.

(3.) The licence shall be entered on the court rolls of the manor, of which entry a certificate in writing of the steward shall be sufficient evidence.

V.—SALES, LEASES, AND OTHER DISPOSITIONS.

SALES, LEASES, AND OTHER DISPOSITIONS.

Mansion and Park.

Mansion and Park.

Restriction as to mansion-house, park, &c.

[**15.** *Notwithstanding anything in this Act, the principal mansion-house on any settled land, and the demesnes thereof, and other lands usually occupied therewith, shall not be sold or leased by the tenant for life, without the consent of the trustees of the settlement, or an order of the Court* (*a*).]

(*a*) This section has been repealed by sect. 10, sub-sect. 1 of the S. L. Act, 1890 (App. XI., *infra*), and re-enacted in an amended form by sect. 10, sub-sects. 2 and 3 of that Act. In exercising its discretion as to sanctioning a sale the Court has regard not only to the wishes and interests of the persons entitled under the settlement, but to all the circumstances of the case, including the well-being of the land and the interests of tenants upon the estate; *Re Marquis of Ailesbury's S. E.*, [1892] 1 Ch. 506; [1892] A. C. 356. A tenant for life cannot sell or lease an easement over the lands usually occupied with the principal mansion-house without the consent of the trustees or an order of the Court; *Dowager Duchess of Sutherland* v. *Duke of Sutherland*, [1893] 3 Ch. 169. For the meaning

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Streets and Open Spaces.

Dedication for streets, open spaces, &c.

Streets and Open Spaces.

16. On or in connexion with a sale or grant for building purposes, or a building lease, the tenant for life, for the general benefit of the residents on the settled land, or on any part thereof,—

(i.) May cause or require any parts of the settled land to be appropriated and laid out for streets, roads, paths, squares, gardens, or other open spaces, for the use, gratuitously or on payment, of the public or of individuals, with sewers, drains, watercourses, fencing, paving, or other works necessary or proper in connexion therewith; and

(ii.) May provide that the parts so appropriated shall be conveyed to or vested in the trustees of the settlement, or other trustees, or any company or public body, on trusts or subject to provisions for securing the continued appropriation thereof to the purposes aforesaid, and the continued repair or maintenance of streets and other places and works aforesaid, with or without provision for appointment of new trustees when required; and

(iii.) May execute any general or other deed necessary or proper for giving effect to the provisions of this section (which deed may be enrolled in the Central Office of the Supreme Court of Judicature), and thereby declare the mode, terms, and conditions of the appropriation, and the manner in which and the persons by whom the benefit thereof is to be enjoyed, and the nature and extent of the privileges and conveniences granted.

Surface and Minerals apart.

Separate dealing with surface and

Surface and Minerals apart.

17.—(1.) A sale, exchange, partition, or mining lease, may be made either of land, with or without an exception or reservation of all or any of the mines and minerals therein, or of any mines and

of the expression "principal mansion-house," see the Act of 1890, s. 10, sub-s. 3, and *Gilbey* v. *Rush*, [1906] 1 Ch. 13; *Re Wythes' S. E.*, [1908] 1 Ch. 593, where the house had been let as a school. As to what should be done where the mansion-house contains heirlooms, see *Re Brown's Will*, 27 Ch. D. 179. The Court will not order a sale, where the tenant for life has mortgaged his interest for the full value, without full information as to the proposed sale, and the consent of the mortgagees; *Re Sebright's S. E.*, 33 Ch. D. 429; but see *Cardigan* v. *Curzon-Howe*, 40 Ch. D. 338; *Re Dickin and Kelsall's Cont.*, [1908] 1 Ch. 213. An order for sale was made in *Re Paget's S. E.*, 30 Ch. D. 161, and a lease of a castle authorised in *Re Thompson*, 21 L. R. Ir. 109, although in each case there was a clause of forfeiture for non-residence.

minerals (*a*), and in any such case with or without a grant or reservation of powers of working, wayleaves or rights of way, rights of water and drainage, and other powers, easements, rights, and privileges for or incident to or connected with mining purposes, in relation to the settled land, or any part thereof, or any other land.

minerals with or without wayleaves, &c.

(2.) An exchange or partition may be made subject to and in consideration of the reservation of an undivided share in mines or minerals.

Mortgage.

Mortgage.

18. Where money is required for enfranchisement (*b*), or for equality of exchange or partition, the tenant for life may raise the same on mortgage of the settled land, or of any part thereof, by conveyance of the fee simple, or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or otherwise, and the money raised shall be capital money arising under this Act (*c*).

Mortgage for equality money, &c.

Undivided Share.

Undivided Share.

19. Where the settled land comprises an undivided share in land, or under the settlement, the settled land has come to be held in undivided shares, the tenant for life of an undivided share may join or concur, in any manner and to any extent necessary or proper for any purpose of this Act, with any person entitled to or having power or right of disposition of or over another undivided share (*d*).

Concurrence in exercise of powers as to undivided share.

Conveyance.

Conveyance.

20.—(1.) On a sale, exchange, partition, lease, mortgage, or charge, the tenant for life may, as regards land sold, given in exchange or on partition, leased, mortgaged, or charged, or intended

Completion of sale, lease, &c., by conveyance.

(*a*) See *Re Duke of Newcastle's Estates*, 24 Ch. D. 129, where this power was held to be exerciseable during the minority of an infant tenant in tail in possession; the power of sale in the settlement not authorising any such exception or reservation, and being exerciseable only with the consent of his guardian, which was held not to be required to an exercise of the statutory power. The section does not abridge the general power of leasing in sect. 6, and any lease may be granted under this power with a reservation of minerals: *Re Gladstone*, [1900] 2 Ch. 101; *Re Duke of Rutland's S. E.*, *ib.* 206; and a lease may also be granted of the minerals with a right to let down the surface: *Sitwell* v. *Earl of Londesborough*, [1905] 1 Ch. 460. See also Trustee Act, 1893 (App. XVI., *infra*), s. 44.

(*b*) Including the enfranchisement of leaseholds by the purchase of the reversion: *Re Bruce*, [1905] 2 Ch. 372.

(*c*) As to raising money for discharging incumbrances, see S. L. Act, 1890 (App. XI., *infra*), s. 11.

(*d*) See sect. 2, sub-sect. 6, sub-sect. 10 (i.), and notes thereto, *supra*, pp. 837, 839.

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so to be, including copyhold or customary or leasehold land vested in trustees, or as regards easements or other rights or privileges sold or leased, or intended so to be, convey or create the same by deed, for the estate or interest the subject of the settlement, or for any less estate or interest, to the uses and in the manner requisite for giving effect to the sale, exchange, partition, lease, mortgage, or charge (*a*).

(2.) Such a deed, to the extent and in the manner to and in which it is expressed or intended to operate and can operate under this Act, is effectual to pass the land conveyed, or the easements, rights, or privileges created, discharged from all the limitations, powers, and provisions of the settlement, and from all estates, interests, and charges (*b*) subsisting or to arise thereunder, but subject to and with the exception of—

(i.) All estates, interests, and charges having priority to the settlement; and

(ii.) All such other, if any, estates, interests, and charges as have been conveyed or created for securing money actually raised at the date of the deed (*c*); and

(iii.) All leases and grants at fee-farm rents or otherwise, and all grants of easements, rights of common, or other rights or privileges granted or made for value in money or money's worth, or agreed so to be, before the date of the deed, by the tenant for life, or by any of his predecessors in title, or by any trustees for him or them, under the settlement, or under any statutory power, or being otherwise binding on the successors in title of the tenant for life.

(3.) In case of a deed relating to copyhold or customary land, it is sufficient that the deed be entered on the court rolls of the manor, and the steward is hereby required, on production to him of the deed, to make the proper entry; and on that production, and on payment of customary fines, fees, and other dues or payments (*d*),

(*a*) As to conveyances to effectuate contracts by predecessors in title, see S. L. Act, 1890 (App. XI., *infra*), s. 6; and cf. sect. 31, *infra*.

(*b*) See *Re Lord Stamford's S. E.*, 43 Ch. D. 84, 93; *Re Marquis of Ailesbury's S. E.*, [1893] 2 Ch. 345, cited under sect. 2, *supra*.

(*c*) These do not include incumbrances made by beneficiaries upon their interests under the settlement, whether in possession or remainder, and the concurrence of such incumbrancers in the conveyance cannot be required. See *Re Dickin and Kelsall's Contract*, [1908] 1 Ch. 213; *Re Davies and Kent's Contract*, [1910] 2 Ch. 35. As to mortgagees of the interest of the tenant for life, however, see sect. 50.

(*d*) Where the copyhold is devised to trustees, and the tenant for life sells, only one fine is payable: *Re Naylor and Spendla*, 34 Ch. D. 217.

any person whose title under the deed requires to be perfected by admittance shall be admitted accordingly; but if the steward so requires, there shall also be produced to him so much of the settlement as may be necessary to show the title of the person executing the deed; and the same may, if the steward thinks fit, be also entered on the court rolls. 45 & 46 VICT. c. 38.

VI.—INVESTMENT OR OTHER APPLICATION OF CAPITAL TRUST MONEY.

INVESTMENT OR OTHER APPLICATION OF CAPITAL TRUST MONEY.

21. Capital money (*a*) arising under this Act (*b*), subject to payment of claims properly payable thereout, and to application thereof for any special authorised object for which the same was raised, shall, when received (*c*), be invested or otherwise applied wholly in one, or partly in one and partly in another or others, of the following modes (namely):

Capital money under Act; investment, &c., by trustees or Court.

(i.) In investment (*d*) on Government securities, or on other securities on which the trustees of the settlement are by the settlement or by law authorised to invest trust money of the settlement, or on the security of the bonds, mortgages, or debentures, or in the purchase of the debenture stock of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having for ten years next before the date of investment paid a dividend on its ordinary stock or shares,

(*a*) See definition in sect. 2 (9). And see S. L. Act, 1887 (App. IX., *infra*), s. 1, and S. L. Act, 1890 (App. XI., *infra*), s. 11.

(*b*) Including, by virtue of the Settled Land Act, 1884, s. 4, fines received on the grant of leases, and including also money bequeathed to be laid out in the purchase of land to be settled in strict settlement, *Re Mackenzie's Trusts*, 23 Ch. D. 750; approved in *Re Mundy's S. E.*, [1891] 1 Ch. 399: accumulations of rents directed by the will to be accumulated, *Clarke* v. *Thornton*, 35 Ch. D. 307; proceeds of heirlooms, *Duke of Marlborough* v. *Marjoribanks*, 32 Ch. D. 1; value of growing timber, *Re Llewellin*, 37 Ch. D. 317; and money raised for the purpose of discharging incumbrances, S. L. Act, 1890 (App. XI., *infra*), s. 11. And see sect. 33, *infra*. The two first-mentioned decisions have in substance overruled the dicta of Bacon, V.-C., in *Re Maberly*, 33 Ch. D. 455, to the effect that trustees are, under ordinary circumstances, bound to invest in the purchase of land if so directed by the trust; see also sect. 33.

(*c*) But there is no power to create a charge on the money before it has been received; *Round* v. *Turner*, W. N. 1889, p. 38. And it is only the trustees who can give a good discharge for capital money, see *Re Norton and Las Casas' Contract*, [1909] 2 Ch. 59.

(*d*) Consols representing proceeds of sale of land under the Settled Estates Act, 1877, were allowed to be sold, and the money invested under this section; *Re Tennant*, 40 Ch. D. 594.

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with power to vary the investment into or for any other such securities (*a*):

(ii.) In discharge, purchase, or redemption of incumbrances affecting the inheritance (*b*) of the settled land (*c*), or other the whole estate the subject of the settlement, or of land-tax, rentcharge in lieu of tithe, Crown rent, chief rent, or quit rent, charged on or payable out of the settled land:

(iii.) In payment for any improvement authorised by this Act (*d*):

(*a*) Not in debentures or debenture stock under the Local Loans Act, 1875; see *Re Maberly*, 33 Ch. D. 455. But see now the Trustee Act, 1893 (App. XVI., *infra*), extending (it is assumed) these powers.

(*b*) It has been held that these words include a mortgage for a long term, *Frewen* v. *James*, 38 Ch. D. 383; and a yearly rentcharge for a long term issuing out of tithes, *Re Esdaile*, W. N. 1886, p. 47; 54 L. T. 637; also arrears of a jointure rentcharge secured by a term, *Re The Duke of Manchester's Settlement*, [1910] 1 Ch. 106. See too *Re Smith's S. E.*, [1901] 1 Ch. 689 (charge for expenses under the Public Health Act, 1875); and *Re Legh's S. E.*, [1902] 2 Ch. 274, a similar case; and the Agricultural Holdings Act, 1908, s. 20.

(*c*) *I.e.*, the land sold, or any other land which is the subject of the settlement, *Re Chaytor's S. E.*, 25 Ch. D. 651; *Re Lord Stamford's S. E.*, 43 Ch. D. 84; *Re Eyre Coote*, [1899] W. N. 222; *Re Richardson*, [1900] 2 Ch. 778. But a tenant for life, having created, before the Act, a charge for land drainage, and improvements under the Improvement of Land Act, 1864 (now amended by the Improvement of Land Act, 1899), which is repayable by instalments, is not entitled under this section to have it paid out of capital money so as to relieve him from payment of the instalments; *Re Knatchbull's S. E.*, 27 Ch. D. 349, on appeal, 29 Ch. D. 588. And trustees purchasing such a charge will hold it upon trust to receive the instalments payable by the tenant for life, and treat them as capital; S. C. But see the Settled Land Acts (Amendment) Act, 1887 (App. IX., *infra*); and *Re Lord Sudeley's S. E.*, 37 Ch. D. 123, where it was held that, under that Act, capital money may be applied in payment of such portions of drainage improvement charges as represent capital, *Re Lord Egmont's S. E.*, 45 Ch. D. 395; *Re Dalison's S. E.*, [1892] 3 Ch. 522; *Re Freme*, [1894] 1 Ch. 1. See, however, *Re Newton's S. E.*, W. N. 1889, p. 201, on appeal, W. N. 1890, p. 24, as to improvements under the Improvement of Land Act, 1864, but not within sect. 25 of the S. L. Act, 1882; and *Re Duke of Leinster's S. E.*, 23 L. R. Ir. 152, where it was held that (notwithstanding the S. L. Act, 1887) capital moneys could not be applied in recouping the tenant for life for the payment off by him of annual instalments of a *terminable* charge in commutation of tithes redeemed under 35 & 36 Vict. c. 90, s. 7. As to charges in commutation of extraordinary tithes, see note (*a*), *infra*, to sub-sect. (vii.).

(*d*) See *infra*, sect. 25; the tenant for life can require such payment to be made even where trustees have power to pay for improvements out of income; *Re Lord Stamford's Estate*, 56 L. T. 484; but not where there is a trust for payment of improvements out of income coming before the trust for the tenant for life; *Re Partington*, [1902] 1 Ch. 711. See also the Agricultural Holdings Act, 1908, s. 20, extending the application of capital money to the payment of compensation under that Act. In *Re Gurney's Settlement*, [1907] 2 Ch. 497, capital money was authorised

(iv.) In payment for equality of exchange or partition of settled land:

(v.) In purchase of the seigniory of any part of the settled land, being freehold land, or in purchase of the fee simple of any part of the settled land, being copyhold or customary land:

(vi.) In purchase of the reversion or freehold in fee of any part of the settled land, being leasehold land held for years, or life, or years determinable on life:

(vii.) In purchase of land (*a*) in fee simple (*b*), or of copyhold or customary land, or of leasehold land held for sixty years or more unexpired at the time of purchase, subject or not to any exception or reservation of or in respect of mines or minerals therein, or of or in respect of rights or powers relative to the working of mines or minerals therein, or in other land (*c*):

(viii.) In purchase, either in fee simple or for a term of sixty years or more, of mines and minerals convenient to be held or worked with the settled land, or of any easement, right, or privilege convenient to be held with the settled land for mining or other purposes (*d*):

(ix.) In payment to any person becoming absolutely entitled or empowered to give an absolute discharge (*e*):

to be expended on an improvement of land out of the jurisdiction settled by an English settlement.

(*a*) See 49 & 50 Vict. c. 54, s. 6, under which "money applicable to the purchase of land to be settled on any uses or trusts" is to be applicable in or towards the redemption of charges on settled land in respect of extraordinary tithe under that Act (such charges being not terminable, but capital sums).

(*b*) Not including of course an equity of redemption: *Re Lord Radnor's S. E.*, [1898] W. N. 174 (14).

(*c*) As to the manner in which purchased lands are to be made subject to the settlement, see sect. 24, *infra*; and as to exceptions in the case of lands settled in trust for sale, see sect. 63 (ii.). Decisions upon the application of purchase-money arising under the Lands Clauses Act are not to be incorporated into clause vii.: *Re Lord Gerard's S. E.*, [1893] 3 Ch. 252.

(*d*) See previous note. As to an easement over the settled land which it is desired to extinguish, see *Re Brotherton*, [1907] W. N. 230; [1908] W. N. 56; and see also *Re Torry Hill Estate*, [1909] 1 Ch. 468.

(*e*) Cf. sect. 32. Payment has been ordered to trustees where the money was paid into Court on a purchase under statutory powers: *Re Wright's Trusts*, 24 Ch. D. 662; *Re Harrop's Trusts*, *id.* 717; *Re Bolton Estates Act*, 1863, W. N. 1885, p. 90; 52 L. T. 728; *Re Wootton's Estate*, W. N. 1890, p. 158; so as to money paid into Court under the Lands Clauses Act, 1845, *Re Duke of Rutland's Settlement*, W. N. 1883, p. 140; 31 W. R. 947; *Re Lord Mayor of Sheffield, &c.*, [1903] 1 Ch. 209; but not money paid with consent of the tenant for life (see sect. 22) into Court instead

45 & 46 Vict. c. 38.

(x.) In payment of costs, charges, and expenses of or incidental to the exercise of any of the powers, or the execution of any of the provisions, of this Act (*a*):

(xi.) In any other mode in which money produced by the exercise of a power of sale in the settlement is applicable thereunder (*b*).

Regulations respecting investment, devolution, and income of securities, &c.

22.—(1.) Capital money arising under this Act shall, in order to its being invested or applied as aforesaid, be paid either to the trustees of the settlement or into Court, at the option of the tenant for life (*c*), and shall be invested or applied by the trustees, or under the direction of the Court, as the case may be, accordingly.

of to the trustees on a sale under the S. L. Act, *Cookes* v. *Cookes*, 34 Ch. D. 498. Payment out, under this section, is not of right, but is a matter for the discretion of the Court: see *Re Smith*, 40 Ch. D. 386, where it was refused on the ground that the remaindermen were not represented by an independent solicitor. And see S. L. Act, 1890 (App. XI., *infra*), s. 14.

(*a*) See *Re Beck*, 24 Ch. D. 608, as to costs payable where there is an attempted sale by auction, followed by an actual sale by private contract. In *Re Chaytor's S. E. Act*, 25 Ch. D. 651, costs were allowed on the higher scale. As to costs of deciding a question under the Act, see *Re Jones*, 26 Ch. D. 736; costs of tenant for life in defending an action to restrain him from selling, *Re Llewellin*, 37 Ch. D. 317; costs of an unsuccessful attempt by tenant for life to sell, *Re Smith's S. E.*, [1891] 3 Ch. 65; costs on sale of infant's land, *Re Rudd*, W. N. 1887, p. 251; costs of separate solicitors employed by some of numerous persons constituting together the tenant for life, *Smith* v. *Lancaster*, [1894] 3 Ch. 439. The costs of obtaining the consent and concurrence of mortgagees of the life estate will not be allowed except under special circumstances: *Cardigan* v. *Curzon-Howe*, 40 Ch. D. 338; affirmed 41 Ch. D. 375 (not following *Re Beck*, *ubi supra*, on this point); *Re Sir R. Peel's S. E.*, [1910] 1 Ch. 389, where the duty of the trustees in regard to the direction by the tenant for life for the payment of costs is discussed. Auctioneer's charges for valuation, report, and survey were held not within this sub-section in *Re Eyton's S. E.*, W. N. 1888, p. 254; but costs of solicitor and surveyor of tenant for life in respect of schemes for improvements were allowed in *Re Lord Stamford's S. E.*, 43 Ch. D. 84, and an estate agent's commission for procuring a lease of settled land in *Re Maryon Wilson's S. E.*, [1901] 1 Ch. 935; but in *Re Leveson-Gower's S. E.*, [1905] 2 Ch. 95, such commission on a short letting was held an income charge, and not allowed out of capital. See further as to costs, sects. 36, 46 (6) and 47.

(*b*) By virtue of sect. 9, sub-sect. 7, of the Finance Act, 1894, capital money arising under the Act may also be expended in paying any estate duty in respect of property comprised in the settlement. And under the Agricultural Holdings Act, 1908, s. 20, such money is applicable for compensation payable under that Act. See also the Finance (1909-10) Act, 1910, s. 39, as to increment value and reversion duty.

(*c*) In *Cookes* v. *Cookes*, 34 Ch. D. 498, the tenant for life was held to have exercised his option by consenting to an order for payment of purchase-money into Court. The option cannot be exercised properly or at all if there are no trustees: *Hatten* v. *Russell*, 38 Ch. D. 345; *Re Fisher and Grazebrook's Contract*, [1898] 2 Ch. 660; though a purchaser paying his purchase-money into Court in ignorance of there being no trustees would get a good title. As to the section generally, see *Duke of Marl-*

45 & 46 Vict. c. 38.

(2.) The investment or other application by the trustees shall be made according to the direction of the tenant for life (*a*), and in default thereof, according to the discretion of the trustees, but in the last-mentioned case subject to any consent required or direction given by the settlement with respect to the investment or other application by the trustees of trust money of the settlement; and any investment shall be in the names or under the control of the trustees.

(3.) The investment or other application under the direction of the Court shall be made on the application of the tenant for life, or of the trustees.

(4.) Any investment or other application shall not during the life of the tenant for life be altered without his consent.

(5.) Capital money arising under this Act while remaining uninvested or unapplied, and securities on which an investment of any such capital money is made, shall, for all purposes of disposition, transmission, and devolution, be considered as land, and the same shall be held for and go to the same persons successively, in the same manner and for and on the same estates, interests, and trusts, as the land wherefrom the money arises would, if not disposed of, have been held and have gone under the settlement (*b*).

(6.) The income of those securities shall be paid or applied as the income of that land, if not disposed of, would have been payable or applicable under the settlement.

borough v. *Marjoribanks*, 32 Ch. D. 1, at pp. 5, 6; *Re Freme*, [1894] 1 Ch. 1; *Re Norton and Las Casas' Contract*, [1909] 2 Ch. 59. As to tenant for life domiciled abroad, *Re Lloyd*, W. N. 1886, p. 37; 54 L. T. 643.

(*a*) See previous note. The sub-section empowers the tenant for life to select the particular securities in which the capital money is to be invested, and so long as he exercises the power of direction honestly he cannot be controlled by the trustees or the Court: *Re Lord Coleridge's Settlement*, [1895] 2 Ch. 704. But the trustees are entitled to choose their own broker and solicitor in making the investment (*Re Duke of Cleveland's S. E.*, [1902] 2 Ch. 350), and it is their duty to satisfy themselves in the case of a mortgage, as to the title and the value of the property (*Re Hotham*, [1901] 2 Ch. 790), and that the investment is a suitable one (*Re Hunt's S. E.*, [1905] 2 Ch. 418; [1906] 2 Ch. 11). See also *Sir R. Peel's S. E.*, [1910] 1 Ch. 389.

(*b*) See *Duke of Marlborough* v. *Marjoribanks*, 32 Ch. D. 1, at pp. 10, 13; *Re Bond*, [1901] 1 Ch. 15; *Re Moses*, [1902] 1 Ch. 100; [1903] A. C. 13. And as to the precise nature of the jurisdiction of the Court with reference to capital money, see *Re De Teissier's S. E.*, [1893] 1 Ch. 153. The peculiar mode of devolution here prescribed with reference to personalty is confined to capital money "*arising under this Act;*" and it cannot be applied by reference to money arising otherwise than under the Act. *Re Walker*, [1908] 2 Ch. 705. Sect. 33 suggests a convenient mode (adopted in the present collection) of avoiding any question on this point.

45 & 46 Vict. c. 38.

(7.) Those securities may be converted into money, which shall be capital money arising under this Act.

Investment in land in England.

23. Capital money arising under this Act from settled land in England shall not be applied in the purchase of land out of England, unless the settlement expressly authorises the same (*a*).

Settlement of land purchased, taken in exchange, &c.

24.—(1.) Land acquired by purchase or in exchange, or on partition, shall be made subject to the settlement in manner directed in this section.

(2.) Freehold land shall be conveyed to the uses, on the trusts, and subject to the powers and provisions which, under the settlement, or by reason of the exercise of any power of charging therein contained, are subsisting with respect to the settled land, or as near thereto as circumstances permit, but not so as to increase or multiply charges or powers of charging.

(3.) Copyhold, customary, or leasehold land shall be conveyed to and vested in the trustees of the settlement on trusts and subject to powers and provisions corresponding, as nearly as the law and circumstances permit, with the uses, trusts, powers, and provisions to, on, and subject to which freehold land is to be conveyed as aforesaid; so nevertheless that the beneficial interest in land held by lease for years shall not vest absolutely in a person who is by the settlement made by purchase tenant in tail, or in tail male, or in tail female, and who dies under the age of twenty-one years, but shall, on the death of that person under that age, go as freehold land conveyed as aforesaid would go.

(4.) Land acquired as aforesaid may be made a substituted security for any charge in respect of money actually raised, and remaining unpaid, from which the settled land, or any part thereof, or any undivided share therein, has theretofore been released on the occasion and in order to the completion of a sale, exchange, or partition.

(5.) Where a charge does not affect the whole of the settled land, then the land acquired shall not be subjected thereto, unless the land is acquired either by purchase with money arising from sale of land which was before the sale subject to the charge, or by an exchange or partition of land which, or an undivided share wherein, was before the exchange or partition subject to the charge (*b*).

(6.) On land being so acquired, any person who, by the direction of the tenant for life, so conveys the land as to subject it to any

(*a*) See *Re Maberly*, 33 Ch. D. 455. "England" includes Wales in Acts of Parliament: 20 Geo. 2, c. 42, s. 3.

(*b*) The charge here mentioned may be one created by the settlement itself: *per* Stirling, J., *Re Lord Stamford's S. E.*, 43 Ch. D. 84, at p. 93.

charge, is not concerned to inquire whether or not it is proper that the land should be subjected to the charge (*a*). 45 & 46 Vict. c. 38.

(7.) The provisions of this section referring to land extend and apply, as far as may be, to mines and minerals, and to easements, rights, and privileges over and in relation to land.

VII.—Improvements.

IMPROVEMENTS.

Improvements with Capital Trust Money.

Improvements with Capital Trust Money.

Description of improvements authorised by Act.

25. Improvements authorised by this Act (*b*) are the making or execution on, or in connection with, and for the benefit of settled land, of any of the following works, or of any works for any of the following purposes, and any operation incident to or necessary or proper in the execution of any of those works, or necessary or

(*a*) See also as to dealing with incumbrances affecting settled land, sect. 5, *supra;* and the S. L. Act, 1890 (App. XI., *infra*), s. 11.

(*b*) For other authorised improvements, see S. L. Act, 1890 (App. XI., *infra*), s. 13. In *Re Houghton's Estate*, 30 Ch. D. 102, capital money was ordered to be applied under this section in paying for improvements to secure a better water-supply to a mansion-house (cf. cl. xiii.), better drainage of the mansion-house, rebuilding the stable, and building an agent's house and two cottages; and it was said that the whole of the expenditure would have been authorised even without the Act, as to which, see *Donaldson* v. *Donaldson*, 3 Ch. D. 743; *Re Aldred's Estate*, 21 Ch. D. 228; *Re Lytton's S. E.*, W. N. 1884, p. 193. But compare and consider *Re Lord Gerard's Settled Estate*, [1893] 3 Ch. 252; and *Re Montagu*, [1897] 1 Ch. 685, on appeal, [1897] 2 Ch. 8, which lays down that there is no general jurisdiction in the Court to authorise trustees of settled property to raise money upon mortgage for the purpose of improving it, except in cases of actual salvage. Mere repairs (as distinguished from permanent improvements) must be paid for out of income (*Re De Teissier's S. E.*, [1893] 1 Ch. 153; *Re Tucker's S. E.*, [1895] 2 Ch. 468; *Re Willis*, [1902] 1 Ch. 15; *Re Leconfield's S. E.*, [1907] 2 Ch. 340); but improvements may be paid for out of capital monies under the Act, even though trustees are authorised to pay for them out of income: *Clarke* v. *Thornton*, 35 Ch. D. 307; followed in *Re Lord Stamford's S. E.*, 56 L. T. 484; and see *Vine* v. *Raleigh*, [1891] 2 Ch. 13. As to extra expenditure incidental to the execution of a scheme for improvements (water supply), but not included in the contract, see *Re Bulwer Lytton's Will*, 38 Ch. D. 20; and as to departure from scheme generally, *Re Earl of Egmont's S. E.*, [1903] W. N. 176. As to re-roofing, see *Re Newton's S. E.*, W. N. 1890, p. 24; *Re Gaskell's S. E.*, [1894] 1 Ch. 485. Silos were held not to be within sect. 25 in *Re Broadwater Estate*, 33 W. R. 738; but they are mentioned as improvements in the schedule to the Agricultural Holdings Act, 1908 (8 Edw. 7, c. 28), which (sect. 20) in effect extends sect. 25 of the S. L. A. so as to include such improvements. Re-draining a house may be an improvement within the section: *Re Barney*, [1894] 3 Ch. 562; *Re Thomas*, [1900] 1 Ch. 319; *Re Leconfield's S. E.*, *ubi supra*. See further, note (*c*) to sect. 21 (ii.), *supra*, p. 852; and sect. 30, note (*b*), *infra*, p. 862; also the note to S. L. Act, 1890 (App. XI.), s. 13.

45 & 46 Vict. c. 38.

proper for carrying into effect any of those purposes, or for securing the full benefit of any of those works or purposes (namely):

(i.) Drainage, including the straightening, widening, or deepening of drains, streams, and watercourses:

(ii.) Irrigation; warping:

(iii.) Drains, pipes, and machinery for supply and distribution of sewage as manure:

(iv.) Embanking or weiring from a river or lake, or from the sea, or a tidal water (*a*):

(v.) Groynes; sea walls; defences against water:

(vi.) Inclosing (*b*); straightening of fences; re-division of fields:

(vii.) Reclamation; dry warping:

(viii.) Farm roads; private roads; roads or streets in villages or towns:

(ix.) Clearing; trenching; planting:

(x.) Cottages for labourers, farm-servants, and artizans, employed on the settled land or not (*c*):

(xi.) Farmhouses, offices, and out-buildings, and other buildings for farm purposes:

(xii.) Saw-mills, scutch-mills, and other mills, water-wheels, engine-houses, and kilns, which will increase the value of the settled land for agricultural purposes or as woodland or otherwise (*d*):

(xiii.) Reservoirs, tanks, conduits, watercourses, pipes, wells, ponds, shafts, dams, weirs, sluices, and other works and machinery for supply and distribution of water for agricultural, manufacturing, or other purposes, or for domestic or other consumption (*e*):

(xiv.) Tramways; railways; canals; docks:

(*a*) *Re Bethlehem and Bridewell Hospitals*, 30 Ch. D. 541.

(*b*) *Re Earl of Dunraven's S. E.*, [1907] 2 Ch. 417, where it was held that the expression included the building of inclosing walls.

(*c*) See *Re Earl of Lisburne's S. E.*, [1901] W. N. 91. Working class dwellings, the building of which in the opinion of the Court is not injurious to the estate, are added by the Housing of the Working Classes Act, 1890, s. 74. See the S. L. Act, 1890 (App. XI., *infra*), s. 18, and the note thereto.

(*d*) As to the words "or otherwise," see *Re Leconfield's S. E.*, *ubi supra*, in which the cost of an engine house erected for the purpose of supplying electric light to the mansion-house was not allowed.

(*e*) *Orwell Park Estate*, [1894] W. N. p. 135; *Re Earl of Dunraven's S. E.*, [1907] 2 Ch. 417, where the cost of a new water supply, including a fire-extinguishing apparatus, was allowed. And as to water supply, see further the Limited Owners Reservoirs and Water Supply Further Facilities Act, 1877.

45 & 46 Vict. c. 38.

(xv.) Jetties, piers, and landing places on rivers, lakes, the sea, or tidal waters, for facilitating transport of persons and of agricultural stock and produce, and of manure and other things required for agricultural purposes, and of minerals, and of things required for mining purposes:

(xvi.) Markets and market-places:

(xvii.) Streets, roads, paths, squares, gardens, or other open spaces for the use, gratuitously or on payment of the public or of individuals, or for dedication to the public, the same being necessary or proper in connexion with the conversion of land into building land:

(xviii.) Sewers, drains, watercourses, pipe-making, fencing, paving, brick-making, tile-making, and other works necessary or proper in connexion with any of the objects aforesaid:

(xix.) Trial pits for mines, and other preliminary works necessary or proper in connexion with development of mines (*a*):

(xx.) Re-construction, enlargement, or improvement of any of those works (*b*).

Approval by Land Commissioners of scheme for improvement and payment thereon (*c*).

26.—(1.) Where the tenant for life is desirous that capital money arising under this Act shall be applied in or towards payment for an improvement authorised by this Act, he may submit for approval to the trustees of the settlement, or to the Court (*d*), as the case may require, a scheme (*e*) for the execution of the improvement, showing the proposed expenditure thereon.

(*a*) See *Re Mundy's S. E.*, [1891] 1 Ch. 399.

(*b*) Regard being had to the opening words of the section, it would seem that the words "those works" in this sub-section refer to the works indicated in the section generally, however or whenever made, and not only to those mentioned in sub-sect. xix. or constructed under the powers of the Act. See *Re Calverley's S. E.*, [1904] 1 Ch. at p. 156, and *Re Earl of Dunraven's S. E.*, *ubi supra*.

(*c*) This section is not retrospective; *Re Knatchbull's S. E.*, 27 Ch. D. 349, affirmed, 29 *id.* 588. And it may be that under the settlement the cost of improvements within the section cannot be thrown upon capital as in *Re Partington*, [1902] 1 Ch. 711, where there was a trust providing for improvements out of income, and the interest of the tenant for life was subject to this trust.

(*d*) *E.g.*, where the money is in Court, and though there be no trustees: *Clarke* v. *Thornton*, 35 Ch. D. 307.

(*e*) A scheme cannot safely be dispensed with, and was formerly essential: *Re Hotchkin's S. E.*, 35 Ch. D. 41; and expenditure by tenant for life without a scheme could not be recouped: *S. C.* (see S. L. A. 1887, App. IX., *infra*). But see now S. L. Act, 1890 (App. XI., *infra*), s. 15. Whether expenses of improvements on land since sold can be paid out of capital money, *qu.*: see *Re Hotchkin's S. E.*, *ubi supra*. See also *Re Bulwer Lytton's Will*, 38 Ch. D. 20. As to the duty of the trustees in

45 & 46 Vict. c. 38.

(2.) Where the capital money to be expended is in the hands of trustees, then, after a scheme is approved by them, the trustees may apply that money in or towards payment for the whole or part of any work or operation comprised in the improvement (*a*), on—

(i.) A certificate of the Land Commissioners (*b*) certifying that the work or operation, or some specified part thereof, has been properly executed, and what amount is properly payable by the trustees in respect thereof, which certificate shall be conclusive in favour of the trustees as an authority and discharge for any payment made by them in pursuance thereof; or on

(ii.) A like certificate of a competent engineer or able practical surveyor nominated by the trustees and approved by the Commissioners, or by the Court, which certificate shall be conclusive as aforesaid; or on

(iii.) An order of the Court directing or authorising the trustees to so apply a specified portion of the capital money (*c*).

(3.) Where the capital money to be expended is in Court, then, after a scheme is approved by the Court, the Court may, if it thinks fit, on a report or certificate of the Commissioners, or of a competent engineer or able practical surveyor, approved by the Court, or on such other evidence as the Court thinks sufficient, make such order and give such directions as it thinks fit for the application of that money, or any part thereof, in or towards payment for the whole or part of any work or operation comprised in the improvement (*d*).

Concurrence in improvements.

27. The tenant for life may join or concur with any other person interested in executing any improvement authorised by this Act, or in contributing to the cost thereof (*e*).

relation to the approval of a scheme, see *Re Egmont's S. E.*, [1906] 2 Ch. 151; *Re Dunraven's S. E.*, [1907] 2 Ch. 417.

(*a*) As to payment of the costs of the preparation and carrying out of the scheme, see *Re Lord Stamford's S. E.*, 43 Ch. D. 84.

(*b*) Now the Board of Agriculture and Fisheries: 52 & 53 Vict. c. 30; 3 Edw. 7, c. 31.

(*c*) A prospective order will not be made: *Re Millard's S. E.*, [1893] 3 Ch. 116. But it was held in *Re Duke of Norfolk's Parliamentary Estates*, [1900] 1 Ch. 461, that the trustees may approve a scheme submitted to them before they have capital monies in their hands, and recoup the tenant for life out of such monies subsequently arising the cost of carrying out the scheme. And see *Re Marquis of Bristol's S. E.*, [1893] 3 Ch. 161. The order is not a matter of course where the trustees have approved the scheme: the Court must be satisfied that the scheme is a proper one: *Re Keck's Settlement*, [1904] 2 Ch. 22.

(*d*) See note (*a*), *supra*.

(*e*) See *Re Orwell Park Estate*, [1894] W. N. p. 135, where the tenant

45 & 46 Vict. c. 38.

Obligation on tenant for life and successors to maintain, insure, &c. (*a*).

28.—(1.) The tenant for life and each of his successors in title having, under the settlement, a limited estate or interest only in the settled land, shall, during such period, if any, as the Land Commissioners (*b*) by certificate in any case prescribe, maintain, and repair, at his own expense, every improvement executed under the foregoing provisions of this Act, and where a building or work in its nature insurable against damage by fire is comprised in the improvement, shall insure and keep insured the same, at his own expense, in such amount, if any, as the Commissioners by certificate in any case prescribe.

(2.) The tenant for life, or any of his successors as aforesaid, shall not cut down or knowingly permit to be cut down, except in proper thinning, any trees planted as an improvement under the foregoing provisions of this Act.

(3.) The tenant for life, and each of his successors as aforesaid, shall from time to time, if required by the Commissioners, on or without the suggestion of any person having, under the settlement, any estate or interest in the settled land in possession, remainder, or otherwise, report to the Commissioners the state of every improvement executed under this Act, and the fact and particulars of fire insurance, if any.

(4.) The Commissioners may vary any certificate made by them under this section, in such manner or to such extent as circumstances appear to them to require, but not so as to increase the liabilities of the tenant for life, or any of his successors as aforesaid.

(5.) If the tenant for life, or any of his successors as aforesaid, fails in any respect to comply with the requisitions of this section, or does any act in contravention thereof, any person having, under the settlement, any estate or interest in the settled land in possession, remainder, or reversion, shall have a right of action, in respect of that default or act, against the tenant for life; and the estate of the tenant for life, after his death, shall be liable to make good to the persons entitled under the settlement any damages occasioned by that default or act.

for life, with the approval of the Court, joined with a water company in a scheme for supplying water to the estate, and the trustees were authorised to apply capital monies in taking fully-paid shares in the company.

(*a*) See S. L. A. 1887, s. 2; App. IX., *infra*.

(*b*) See p. 860, *supra*, note (*b*).

45 & 46 Vict. c. 38.

Execution and Repair of Improvements.

Protection as regards waste in execution and repair of improvements.

Execution and Repair of Improvements.

29. The tenant for life, and each of his successors in title having, under the settlement, a limited estate or interest only in the settled land, and all persons employed by or under contract with the tenant for life, or any such successor, may from time to time enter on the settled land, and, without impeachment of waste by any remainderman or reversioner, thereon execute any improvement authorised by this Act, or inspect, maintain, and repair the same, and, for the purposes thereof, on the settled land, do, make, and use all acts, works, and conveniences proper for the execution, maintenance, repair, and use thereof, and get and work freestone, limestone, clay, sand, and other substances, and make tramways and other ways, and burn and make bricks, tiles, and other things, and cut down and use timber and other trees not planted or left standing for shelter or ornament.

Improvement of Land Act, 1864.

Extension of 27 & 28 Vict. c. 114, s. 9.

Improvement of Land Act, 1864.

30. The enumeration of improvements contained in section nine of the Improvement of Land Act, 1864, is hereby extended so as to comprise, subject and according to the provisions of that Act, but only as regards applications made to the Land Commissioners (*a*) after the commencement of this Act, all improvements authorised by this Act (*b*).

CONTRACTS.

Power for tenant for life to enter into contracts.

VIII.—CONTRACTS.

31.—(1.) A tenant for life—

(i.) May contract (*c*) to make any sale, exchange, partition, mortgage, or charge; and

(ii.) May vary or rescind, with or without consideration, the contract, in the like cases and manner in which, if he were absolute owner of the settled land, he might lawfully vary or rescind the same, but so that the contract

(*a*) See p. 860, *supra*, n. (*b*).

(*b*) The section merely enlarges the number of improvements which can be made under the Improvement of Land Act, 1864, *per* Lindley, L. J., *Re Earl of Strafford and Maples*, [1896] 1 Ch. 235. *Qy.* whether improvements within that Act can be paid for under the S. L. Act, unless they are within sect. 25, *supra*, *Re Newton's S. E.*, W. N. 1889, p. 201; on appeal, W. N. 1890, p. 24. The Act of 1864 has been amended by the Improvement of Land Act, 1899 (62 & 63 Vict. c. 46).

(*c*) As to the distinction in the Act between the contract and the sale, see *Duke of Marlborough* v. *Sartoris*, 32 Ch. D. 616; *sed quære*.

as varied be in conformity with this Act; and any such consideration, if paid in money, shall be capital money arising under this Act; and 45 & 46 Vict. c. 38.

(iii.) May contract to make any lease; and in making the lease may vary the terms, with or without consideration, but so that the lease be in conformity with this Act; and

(iv.) May accept a surrender of a contract for a lease, in like manner and on the like terms in and on which he might accept a surrender of a lease; and thereupon may make a new or other contract, or new or other contracts, for or relative to a lease or leases, in like manner and on the like terms in and on which he might make a new or other lease, or new or other leases, where a lease had been granted; and

(v.) May enter into a contract for or relating to the execution of any improvement authorised by this Act, and may vary or rescind the same; and

(vi.) May, in any other case, enter into a contract to do any act for carrying into effect any of the purposes of this Act, and may vary or rescind the same.

(2.) Every contract shall be binding on and shall enure for the benefit of the settled land, and shall be enforceable against and by every successor in title for the time being of the tenant for life, and may be carried into effect by any such successor (*a*); but so that it may be varied or rescinded by any such successor, in the like case and manner, if any, as if it had been made by himself.

(3.) The Court may, on the application of the tenant for life, or of any such successor, or of any person interested in any contract, give directions respecting the enforcing, carrying into effect, varying, or rescinding thereof (*b*).

(4.) Any preliminary contract under this Act for or relating to a lease shall not form part of the title or evidence of the title of any person to the lease, or to the benefit thereof (*c*).

(*a*) See sect. 12, *supra*, p. 846, and note (*d*). As to the power of a tenant for life to complete a predecessor's contract, see S. L. Act, 1890 (App. XI., *infra*), s. 6. By sect. 12 of that Act provision is made enabling dealings as between the tenant for life and the estate.

(*b*) Upon an application under this sub-section nothing can be decided as against persons not parties to the contract: *Re The Ailesbury S. E.*, W. N. 1893, p. 140.

(*c*) Sect. 4 of the Conv. Act, 1882 (App. V., *supra*), seems also to extend to this case.

45 & 46 Vict. c. 38.

MISCELLANEOUS PROVISIONS.

IX.—Miscellaneous Provisions.

Application of money in Court under Lands Clauses and other Acts.

8 & 9 Vict. c. 18.
23 & 24 Vict. c. 106.
32 & 33 Vict. c. 18.
40 & 41 Vict. c. 18.

32. Where, under an Act incorporating or applying, wholly or in part, the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, or under the Settled Estates Act, 1877 (*a*), or under any other Act, public, local, personal, or private, money is at the commencement of this Act in Court, or is afterwards paid into Court, and is liable to be laid out in the purchase of land to be made subject to a settlement, then, in addition to any mode of dealing therewith authorised by the Act under which the money is in Court, that money may be invested or applied as capital money arising under this Act, on the like terms, if any, respecting costs and other things, as nearly as circumstances admit, and (notwithstanding anything in this Act) according to the same procedure, as if the modes of investment or application authorised by this Act were authorised by the Act under which the money is in Court (*b*).

Application of money in hands of trustees under powers of settlement.

33. Where, under a settlement, money is in the hands of trustees, and is liable to be laid out (*c*) in the purchase of land to be made subject to the settlement, then, in addition to such powers of dealing therewith as the trustees have independently of this Act, they may, at the option of the tenant for life, invest or apply the same as capital money arising under this Act (*d*).

(*a*) In *Re Arabin's Trusts*, W. N. 1885, p. 90, Kay, J., required the separate examination of a married woman to be taken on a petition under the S. E. Act, 1877: see, however, *Re Ward's S. E.*, W. N. 1895, p. 41. As to cases within the M. W. P. Act, 1882, see *Riddell* v. *Errington*, 26 Ch. D. 220.

(*b*) Money in Court under any of the Acts referred to may be paid out to trustees. See sect. 21 (ix.), p. 853, *supra*, and cases cited in note (*e*), and S. L. Act, 1890 (App. XI., *infra*), s. 14. The costs of any investment of such money should, it seems, be paid by the company or body by whom it was paid in: *Re Hanbury's Trusts*, W. N. 1883, p. 116; 31 W. R. 784; *Re Harrop's Trusts*, 24 Ch. D. 717. Purchase-moneys paid into Court under the Lands Clauses Act of land belonging to a charity have been held to be within this section: *Re Byron's Charity*, 23 Ch. D. 171: see also *Re Bethlehem and Bridewell Hospitals*, 30 Ch. D. 541; and *Ex parte Vicar of Castle Bytham*, [1895] 1 Ch. 348, where the land taken belonged to an ecclesiastical corporation sole.

(*c*) See as to these words and the construction of the section, *Re Hill's S. E.*, [1896] 1 Ch. 962, where trustees were empowered to invest money, at the request of the tenant for life, in the purchase of particular land only; and *Re Soltau's Trusts*, [1898] 2 Ch. 629, where trustees had a *power* of investing moneys in their hands in the purchase of land, it being held that the section applied to both cases. See also, *Re Child's Settlement*, [1907] 2 Ch. 348; *Re Torry Hill Estate*, [1909] 1 Ch. 468.

(*d*) Although it has not arisen from the sale of land: *Re Mackenzie's Trusts*, 23 Ch. D. 750; *Re Mundy's S. E.*, [1891] 1 Ch. 399; *Re Byng's S. E.*, [1892] 2 Ch. 219. See, too, *Clarke* v. *Thornton*, 35 Ch. D. 307; *Re Tennant*, 40 Ch. D. 594, and cases cited in note (*b*) to sect. 21, p. 851.

45 & 46 Vict. c. 38.

Application of money paid for lease or reversion.

34. Where capital money arising under this Act is purchase-money paid in respect of a lease for years, or life, or years determinable on life, or in respect of any other estate or interest in land less than the fee simple, or in respect of a reversion dependent on any such lease, estate, or interest, the trustees of the settlement or the Court, as the case may be, and in the case of the Court on the application of any party interested in that money, may, notwithstanding anything in this Act, require and cause the same to be laid out, invested, accumulated, and paid in such manner as, in the judgment of the trustees or of the Court, as the case may be, will give to the parties interested in that money the like benefit therefrom as they might lawfully have had from the lease, estate, interest, or reversion in respect whereof the money was paid, or as near thereto as may be (*a*).

Cutting and sale of timber, and part of proceeds to be set aside.

35.—(1.) Where a tenant for life is impeachable for waste in respect of timber, and there is on the settled land timber ripe and fit for cutting, the tenant for life, on obtaining the consent of the trustees of the settlement, or an order of the Court, may cut and sell that timber, or any part thereof.

(2.) Three fourth parts of the net proceeds of the sale shall be set aside as and be capital money arising under this Act, and the other fourth part shall go as rents and profits (*b*).

Proceedings for protection or recovery of land settled or claimed as settled.

36. The Court may, if it thinks fit, approve of any action, defence, petition to Parliament, parliamentary opposition, or other proceeding taken or proposed to be taken for protection of settled land, or of any action or proceeding taken or proposed to be taken for recovery of land being or alleged to be subject to a settlement, and may direct that any costs, charges, or expenses incurred or to

supra. The section gives the tenant for life an option to direct how the money shall be invested or applied: *Re Gee*, W. N. 1895, p. 90. In *Re Tesseyman's S. E.*, W. N. 1897, p. 168, there being no tenant for life to exercise the option, the Court directed the application of the money.

(*a*) See *Cottrell* v. *Cottrell*, 28 Ch. D. 629; *Re Griffith's Will*, 49 L. T. 161; *Askew* v. *Woodhead*, 14 Ch. D. 27; and as to renewable leaseholds, *Re Barber's S. E.*, 18 Ch. D. 624; *Re Lord Ranelagh's Will*, 26 Ch. D. 590; as to reversions, *Re Sebright's S. E.*, 33 Ch. D. 429, 440; as to ground rents, *Re Bowyer's S. E.*, W. N. 1892, p. 48. This section does not apply to chattels which are sold under sect. 37: *Re Duke of Marlborough's Settlement*, 30 Ch. D. at p. 133.

(*b*) *Re Duke of Newcastle's Settlement*, W. N. 1883, p. 99. But where the tenant for life had power to cut and sell timber and apply the proceeds to his own use, it was held that on a sale of the estate and growing timber, the amount of the valuation of the timber was capital money payable to the trustees under sect. 21 of this Act: *Re Llewellin*, 37 Ch. D. 317.

45 & 46 Vict. c. 38.

be incurred in relation thereto, or any part thereof, be paid out of property subject to the settlement (*a*).

Heirlooms.

37.—(1.) Where personal chattels are settled on trust so as to devolve with land until a tenant in tail by purchase is born or attains the age of twenty-one years, or so as otherwise to vest in some person becoming entitled to an estate of freehold of inheritance in the land, a tenant for life of the land may sell the chattels or any of them.

(2.) The money arising by the sale shall be capital money arising under this Act, and shall be paid, invested, or applied and otherwise dealt with in like manner in all respects as by this Act directed with respect to other capital money arising under this Act, or may be invested in the purchase of other chattels, of the same or any other nature, which, when purchased, shall be settled and held on the same trusts, and shall devolve in the same manner as the chattels sold (*b*).

(3.) A sale or purchase of chattels under this section shall not be made without an order of the Court (*c*).

(*a*) Proceedings to establish a claim to a peerage (the result being also to recover estates) have been held to be within this section: *Re Earl of Aylesford's S. E.*, 32 Ch. D. 162. See also *Re Jones*, 31 W. R. 399; *Stanford* v. *Roberts*, 52 L. J. Ch. 50; *Re Ormrod's S. E.*, [1892] 2 Ch. 318, where it was said that independently of this section the Court had, under its general jurisdiction, power to allow costs of parliamentary opposition out of capital money.

(*b*) See *Re Duke of Marlborough's Settlement*, 30 Ch. D. 127; 32 *id.* 1; *Re Houghton Estate*, 30 Ch. D. 102; *Re Earl of Radnor's Will Trusts*, 45 Ch. D. 402; *Re Lord Stafford's Settlement and Will*, [1904] 2 Ch. 72. It seems that heirlooms settled so as to devolve with a dignity may be sold under this section: *Re Sir J. R. Carnac's Will*, 30 Ch. D. 136. In *Re Brown's Will*, 27 Ch. D. 179, it was held that leave for sale of a mansion-house containing heirlooms ought not to be granted without some direction as to the disposal of the heirlooms, and they were ordered to be sold with liberty for the tenant for life to bid at the sale. See also *Browne* v. *Collins*, W. N. 1890, p. 78; 62 L. T. 566. Sale of heirlooms was refused in *Re Beaumont*, 58 L. T. 916. A trustee with power of sale of land is trustee for purposes of this section: *Constable* v. *Constable*, 32 Ch. D. 233. Where the proceeds of the sale of heirlooms are invested in land, such land is not subject to the charges affecting the settled land at the time of the sale: *Re Duke of Marlborough, &c.*, [1897] 1 Ch. 712. In *Re Countess Waldegrave*, W. N. 1899, p. 240, a portion of the proceeds of sale of certain heirlooms was allowed to be applied in the repair and renovation of other unsold heirlooms. As to the powers of the trustees to insure heirlooms, see *Re Earl of Egmont's Trusts*, [1908] 1 Ch. 821.

(*c*) There is no jurisdiction to make an order *ex post facto*; but where chattels had been sold advantageously without an order, the Court protected the trustees by directing them not to take steps to recover the chattels: *Re Ames*, [1893] 2 Ch. 479. Leave to sell the celebrated Hope diamond was refused in *Re Hope*, [1899] 2 Ch. 679, where the principles on which the discretion of the Court under sub-sect. (3) is exercised are discussed.

X.—TRUSTEES.

Appointment of trustees by Court.

38.—(1.) If at any time there are no trustees of a settlement within the definition (*a*) in this Act, or where in any other case it is expedient, for purposes of this Act, that new trustees of a settlement be appointed, the Court may, if it thinks fit, on the application of the tenant for life, or of any other person having, under the settlement, an estate or interest in the settled land, in possession, remainder or otherwise, or, in the case of an infant, of his testamentary or other guardian, or next friend, appoint fit persons to be trustees under the settlement for purposes of this Act (*b*).

(2.) The persons so appointed, and the survivors and survivor of them, while continuing to be trustees or trustee, and until the appointment of new trustees, the personal representatives or representative, for the time being of the last surviving or continuing trustee, shall for purposes of this Act become and be the trustees or trustee of the settlement (*c*).

Number of trustees to act.

39.—(1.) Notwithstanding anything in this Act, capital money arising under this Act shall not be paid to fewer than two persons

(*a*) See sect. 2 (8), and note (*b*), p. 838, *supra*; and S. L. Act, 1890 (App. XI., *infra*), s. 16.

(*b*) Neither the tenant for life, nor a person who may become tenant for life, will be appointed: *Re Harrop's Trusts*, 24 Ch. D. 717, 719; nor as a rule, the solicitor of the tenant for life, *Re Kemp's S. E.*, *id.* 485; *Re Spencer's S. E.*, [1903] 1 Ch. 75; nor in general two persons who are near relatives to each other, *Re Knowles' S. E.*, 27 Ch. D. 707; see, however, *Re Wells*, 48 L. T. 859. In *Re Morgan*, 24 Ch. D. 114, the trustees of the will creating the settlement were appointed. But there is no rule of practice that the trustees of the will ought to be appointed: *Re Nicholas and S. L. Act*, 1882, W. N. 1894, p. 165. Colonial trustees were appointed in *Re Simpson*, [1897] 1 Ch. 256, where there was an infant co-owner domiciled in Australia. In exceptional cases a beneficiary may be appointed: *Tempest* v. *Camoys*, W. N. 1888, p. 17; 58 L. T. 202. In *Re Wright's Trusts*, 24 Ch. D. 662, trustees were appointed in order that a fund in Court might be paid out to them. In *Re Wilcock*, 34 Ch. D. 508, a trustee was appointed under this section in place of a retiring trustee. Trustees appointed under this section have the power to give receipts under sect. 40: *Cookes* v. *Cookes*, 34 Ch. D. 498. In cases within sect. 60 (*infra*) it is not necessary to appoint trustees under sect. 38: *Re Dudley*, 35 Ch. D. 338. As to stamp on the order, see *Re Potter*, W. N. 1889, p. 69; *Re Kennaway*, *ib.* 70. The application should be by summons in Chambers; see Settled Land Act Rules. The summons should be entitled in the matter of the estates settled and the Act; *Re Parry*, W. N. 1884, p. 43. An injunction may be granted to restrain the tenant for life from selling until trustees have been properly appointed for purposes of the Act: *Wheelwright* v. *Walker*, 23 Ch. D. 752.

(*c*) The provisions with reference to the appointment of new trustees contained in the Trustee Act, 1893 (App. XVI., *infra*), apply to trustees for the purposes of the Settled Land Acts. See sect. 47 of the Trustee Act, 1893.

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as trustees of a settlement, unless the settlement authorises the receipt of capital trust money of the settlement by one trustee (*a*).

(2.) Subject thereto, the provisions of this Act referring to the trustees of a settlement apply to the surviving or continuing trustees or trustee of the settlement for the time being.

Trustees' receipts.

40. The receipt in writing of the trustees of a settlement, or where one trustee is empowered to act, of one trustee, or of the personal representatives or representative of the last surviving or continuing trustee, for any money or securities, paid or transferred to the trustees, trustee, representatives, or representative, as the case may be, effectually discharges the payer or transferor therefrom, and from being bound to see to the application or being answerable for any loss or misapplication thereof, and, in case of a mortgagee or other person advancing money, from being concerned to see that any money advanced by him is wanted for any purpose of this Act, or that no more than is wanted is raised (*b*).

Protection of each trustee individually.

41. Each person who is for the time being trustee of a settlement is answerable for what he actually receives only, notwithstanding his signing any receipt for conformity, and in respect of his own acts, receipts, and defaults only, and is not answerable in respect of those of any other trustee, or of any banker, broker, or other person, or for the insufficiency or deficiency of any securities, or for any loss not happening through his own wilful default.

Protection of trustees generally.

42. The trustees of a settlement, or any of them, are not liable for giving any consent, or for not making, bringing, taking, or doing any such application, action, proceeding, or thing, as they might make, bring, take, or do (*c*); and in case of purchase of land with capital money arising under this Act, or of an exchange, partition, or lease, are not liable for adopting any contract made by the tenant for life, or bound to inquire as to the propriety of the purchase, exchange, partition or lease, or answerable as regards any price, consideration, or fine, and are not liable to see to or answerable for the investigation of the title, or answerable for a conveyance of land, if the conveyance purports to convey the land in the proper mode, or liable in respect of purchase-money paid by them by direction of the tenant for life to any person joining in the conveyance as a conveying party, or as giving a receipt for the purchase-money, or in any other character, or in respect of any other money

(*a*) See *Re Garnett-Orme & Hargreaves' Contract*, 25 Ch. D. 595.

(*b*) This section applies to trustees appointed under sect. 38: *Cookes* v. *Cookes*, 34 Ch. D. 498; *Hatten* v. *Russell*, 38 Ch. D. 334. See also *Pyne* v. *Phillips*, W. N. 1895, p. 8.

(*c*) Compare sect. 44.

paid by them by direction of the tenant for life, on the purchase, exchange, partition, or lease (*a*). 45 & 46 VICT. c. 38.

43. The trustees of a settlement may reimburse themselves or pay and discharge out of the trust property all expenses properly incurred by them. Trustees' reimbursement.

44. If at any time a difference arises between a tenant for life and the trustees of the settlement respecting the exercise of any of the powers of this Act, or respecting any matter relating thereto, the Court may, on the application of either party, give such directions respecting the matter in difference, and respecting the costs of the application, as the Court thinks fit (*b*). Reference of differences to Court.

45.—(1.) A tenant for life, when intending to make a sale, exchange, partition, lease, mortgage, or charge, shall give notice of his intention in that behalf to each of the trustees of the settlement (*c*), by posting registered letters, containing the notice, addressed to the trustees, severally, each at his usual or last known place of abode in the United Kingdom, and shall give like notice to the solicitor for the trustees, if any such solicitor is known to the tenant for life, by posting a registered letter containing the notice, addressed to the solicitor at his place of business in the United Kingdom, every letter under this section being posted not less than Notice to trustees.

(*a*) As to the duties of the trustees, see the remarks of Pearson, J., in *Wheelwright* v. *Walker*, 23 Ch. D. 752, 761, and of Kay, J., in *Hatten* v. *Russell*, 38 Ch. D. 334. Trustees should hold an even hand as between remaindermen and tenant for life, and will not, as a rule, be heard in support of an application to the Court by the tenant for life desiring to exercise some power under the Acts: *Re Hotchkin's S. E.*, 35 Ch. D. 41. In *Re Broadwater Estate*, 53 L. T. N. S. 745, where the tenant for life appealed from the refusal of an application for an order directing the trustees to lay out capital moneys, and the trustees, to save the expense of being separately represented upon the appeal, appeared by the same counsel as the tenant for life, they were not allowed their costs of the appeal out of the estate. It should be observed that the latter part of the section applies only to a purchase, exchange, partition, or lease. See *Re Hotham*, [1901] 2 Ch. 790; [1902] 2 Ch. 575. And see also in reference to this section, sect. 22, and note (*a*), at p. 855, *supra*.

(*b*) As to the duty of the trustees of a settlement to take proceedings under this section, see *Wheelwright* v. *Walker*, 23 Ch. D. 752, 762; but see also sect. 42, *supra*.

(*c*) The Court will restrain the tenant for life from selling, while there are no trustees in existence: *Wheelwright* v. *Walker*, 23 Ch. D. 752. As to the nature of the notice to be given with reference to a sale, exchange, partition or lease, and waiver of notice, see the Settled Land Act, 1884 (App. VIII., *infra*), s. 5; but that section does not include mortgages or charges, and as to these notice must be specific: *Re Ray's S. E.*, 25 Ch. D. 464. No notice under this section need be given in respect of a lease for a term not exceeding 21 years at a rack rent to a lessee, not exempted from punishment for waste: S. L. Act, 1890 (App. XI., *infra*), s. 7, and see *Mogridge* v. *Clapp*, [1892] 3 Ch. 382.

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one month before the making by the tenant for life of the sale, exchange, partition, lease, mortgage, or charge, or of a contract for the same (*a*).

(2.) Provided that at the date of notice given the number of trustees shall not be less than two, unless a contrary intention is expressed in the settlement (*b*).

(3.) A person dealing in good faith with the tenant for life is not concerned to inquire respecting the giving of any such notice as is required by this section (*c*).

COURT; LAND COMMISSIONERS; PROCEDURE.

XI.—Court; Land Commissioners; Procedure.

Regulations respecting payments into Court, applications, &c.

46.—(1.) All matters within the jurisdiction of the Court under this Act shall, subject to the Acts regulating the Court, be assigned to the Chancery Division of the Court.

(2.) Payment of money into Court effectually exonerates therefrom the person making the payment.

(3.) Every application to the Court shall be by petition, or by summons at Chambers (*d*).

(4.) On an application by the trustees of a settlement notice shall be served in the first instance on the tenant for life.

(5.) On any application notice shall be served on such persons, if any, as the Court thinks fit.

(6.) The Court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges, or expenses

(*a*) Notice given less than a month before contract but more than a month before the day for completion was held sufficient in *Duke of Marlborough* v. *Sartoris*, 32 Ch. D. 616; and a purchaser is protected if there are trustees at the time of completion to whom notice has been or might have been given: *Hatten* v. *Russell*, 38 Ch. D. 334. See also *Re Fisher and Grazebrook's Contract*, [1898] 2 Ch. 660. No notice need be given where trustees have been appointed under sect. 60 to carry out a sale: *Re Countess of Dudley's Contract*, 35 Ch. D. 338.

(*b*) Such an intention is expressed where the settlement authorises capital trust money of the settlement to be paid to the survivor of several trustees: *Re Garnett-Orme & Hargreaves' Contract*, 25 Ch. D. 595.

(*c*) See *Hatten* v. *Russell*, 38 Ch. D. 334; *Mogridge* v. *Clapp*, [1892] 3 Ch. 382, where a lessee was held to be protected by this sub-section, though there were no trustees, and it was suggested that had the lessee known that such was the case it would have made no difference: and *Re Fisher & Grazebrook's Contract*, [1898] 2 Ch. 660.

(*d*) Under rule 2 of the S. L. Act Rules, 1882, all applications to the Court may be made by summons, and only the costs of a summons are to be allowed if a petition is presented without the direction of the judge. The costs of a petition were allowed in *Re Bethlehem and Bridewell Hospitals*, 30 Ch. D. 541. See *Re Smith's S. E.*, [1891] 3 Ch. 65, where under sub-sect. (6), read together with sect. 55, sub-sect. 3, the costs of an unsuccessful attempt by the tenant for life to sell were charged upon the settled land; and see sect. 21 (x.), and note (*a*), *supra*, p. 854.

of all or any of the parties to any application, and may, if it thinks fit, order that all or any of those costs, charges, or expenses be paid out of property subject to the settlement (*a*). 45 & 46 Vict. c. 38.

(7.) General Rules for purposes of this Act shall be deemed Rules of Court within section seventeen of the Appellate Jurisdiction Act, 1876, as altered by section nineteen of the Supreme Court of Judicature Act, 1881, and may be made accordingly (*b*). 39 & 40 Vict. c. 59. 44 & 45 Vict. c. 68.

(8.) The powers of the Court may, as regards land in the County Palatine of Lancaster, be exercised also by the Court of Chancery of the County Palatine; and Rules for regulating proceedings in that Court shall be from time to time made by the Chancellor of the Duchy of Lancaster, with the advice and consent of a Judge of the High Court acting in the Chancery Division, and of the Vice-Chancellor of the County Palatine.

(9.) *General Rules, and Rules for the Court of Chancery of the County Palatine, may be made at any time after the passing of this Act, to take effect on or after the commencement of this Act* (*c*).

(10.) The powers of the Court may, as regards land not exceeding in capital value five hundred pounds, or in annual rateable value thirty pounds, and, as regards capital money arising under this Act, and securities in which the same is invested, not exceeding in amount or value five hundred pounds, and as regards personal chattels settled or to be settled, as in this Act mentioned, not exceeding in value five hundred pounds, be exercised by any County Court within the district whereof is situate any part of the land which is to be dealt with in the Court, or from which the capital money to be dealt with in the Court arises under this Act, or in connexion with which the personal chattels to be dealt with in the Court are settled.

Payment of costs out of settled property.

47. Where the Court directs that any costs, charges, or expenses be paid out of property subject to a settlement, the same shall, subject and according to the directions of the Court, be raised and paid out of capital money arising under this Act, or other money liable to be laid out in the purchase of land to be made subject to the settlement, or out of investments representing such money, or out of income of any such money or investments, or out of any accumulations of income of land, money, or investments, or by means of a sale of part of the settled land in respect whereof the costs, charges, or expenses are incurred, or of other settled land

(*a*) See note (*d*), p. 870.

(*b*) See the Settled Land Act Rules and Forms, 1882, issued in Dec., 1882 (W. N., Jan. 6th, 1883).

(*c*) This sub-section has been repealed by the Statute Law Revision Act, 1898.

45 & 46 Vict. c. 38.

comprised in the same settlement and subject to the same limitations, or by means of a mortgage of the settled land or any part thereof, to be made by such person as the Court directs, and either by conveyance of the fee simple or other estate or interest the subject of the settlement, or by creation of a term, or otherwise, or by means of a charge on the settled land or any part thereof, or partly in one of those modes and partly in another or others, or in any such other mode as the Court thinks fit (*a*).

Constitution of Land Commissioners; their powers, &c.

48.—(1.) The commissioners now bearing the three several styles of the Inclosure Commissioners for England and Wales, and the Copyhold Commissioners, and the Tithe Commissioners for England and Wales shall, by virtue of this Act, become and shall be styled the Land Commissioners for England (*b*).

(2.) The Land Commissioners shall cause one seal to be made with their style as given by this Act; and in the execution and discharge of any power or duty under any Act relating to the three several bodies of commissioners aforesaid, they shall adopt and use the seal and style of the Land Commissioners for England, and no other.

(3.) Nothing in the foregoing provisions of this section shall be construed as altering in any respect the powers, authorities, or duties of the Land Commissioners, or as affecting in respect of appointment, salary, pension, or otherwise, any of those commissioners, in office at the passing of this Act, or any assistant commissioner, secretary, or other officer or person then in office or employed under them.

(4.) All Acts of Parliament, judgments, decrees, or orders of any Court, awards, deeds, and other documents, passed or made before the commencement of this Act, shall be read and have effect as if the Land Commissioners were therein mentioned instead of one or more of the three several bodies of commissioners aforesaid.

(5.) All acts, matters, and things commenced by or under the authority of any one or more of the three several bodies of commissioners aforesaid before the commencement of this Act, and not then completed, shall and may be carried on and completed by or under the authority of the Land Commissioners; and the Land Commissioners, for the purpose of prosecuting, or defending, and

(*a*) See sect. 21 (x.), and note (*a*), *supra*, p. 854; and *Re Smith's S. E.*, [1891] 3 Ch. 65.

(*b*) The powers and duties of the Land Commissioners were transferred to the Board of Agriculture by the Board of Agriculture Act, 1889 (52 & 53 Vict. c. 30), which repeals this section down to the end of sub-sect. 5, inclusive. The Board is now styled the Board of Agriculture and Fisheries (3 Edw. 7, c. 31).

carrying on any action, suit, or proceeding pending at the commencement of this Act, shall come into the place of any one or more, as the case may require, of the three several bodies of commissioners aforesaid. 45 & 46 Vict. c. 38.

(6.) The Land Commissioners shall, by virtue of this Act, have, for the purposes of any Act, public, local, personal, or private, passed or to be passed, making provision for the execution of improvements on settled land, all such powers and authorities as they have for the purposes of the Improvement of Land Act, 1864; and the provisions of the last-mentioned Act relating to their proceedings and inquiries, and to authentication of instruments, and to declarations, statements, notices, applications, forms, security for expenses, inspections, and examinations, shall extend and apply as far as the nature and circumstances of the case admit, to acts and proceedings done or taken by or in relation to the Land Commissioners under any Act making provision as last aforesaid; and the provisions of any Act relating to fees or to security for costs to be taken in respect of the business transacted under the Acts administered by the three several bodies of commissioners aforesaid shall extend and apply to the business transacted by or under the direction of the Land Commissioners under any Act, public, local, personal, or private, passed or to be passed, by which any power or duty is conferred or imposed on them. 27 & 28 Vict. c. 114.

Filing of certificates, &c., of Commissioners.

49.—(1.) Every certificate and report approved and made by the Land Commissioners under this Act shall be filed in their office.

(2.) An office copy of any certificate or report so filed shall be delivered out of their office to any person requiring the same, on payment of the proper fee, and shall be sufficient evidence of the certificate or report whereof it purports to be a copy.

XII.—Restrictions, Savings, and General Provisions.

RESTRICTIONS, SAVINGS, AND GENERAL PROVISIONS.

Powers not assignable; contract not to exercise powers void.

50.—(1.) The powers under this Act of a tenant for life are not capable of assignment or release, and do not pass to a person as being, by operation of law or otherwise, an assignee of a tenant for life, and remain exerciseable by the tenant for life after and notwithstanding any assignment, by operation of law or otherwise, of his estate or interest under the settlement (*a*).

(*a*) *E.g.*, after his bankruptcy: *Re Mansel's S. E.*, W. N. 1884, p. 209; *Re The Marquis of Ailesbury's S. E.*, [1892] 1 Ch. 506. See also *Re Mundy & Roper's Contract*, [1899] 1 Ch. 275, where there had been a re-setttlement: *Earl of Lonsdale* v. *Lowther*, [1900] 2 Ch. 687; and *Re Barlow's Contract*, [1903] 1 Ch. 382, deciding that a tenant for life who

45 & 46 Vict. c. 38.

(2.) A contract by a tenant for life not to exercise any of his powers under this Act is void.

(3.) But this section shall operate without prejudice to the rights of any person being an assignee for value of the estate or interest of the tenant for life (*a*); and in that case the assignee's rights shall not be affected without his consent, except that, unless the assignee is actually in possession of the settled land or part thereof, his consent shall not be requisite for the making of leases thereof by the tenant for life, provided the leases are made at the best rent that can reasonably be obtained, without fine, and in other respects are in conformity with this Act.

(4.) This section extends to assignments made or coming into operation before or after and to acts done before or after the commencement of this Act; and in this section assignment includes assignment by way of mortgage, and any partial or qualified assignment, and any charge or incumbrance; and assignee has a meaning corresponding with that of assignment.

Prohibition or limitation against exercise of powers, void.

51.—(1.) If in a settlement, will, assurance, or other instrument executed or made before or after, or partly before and partly after, the commencement of this Act a provision is inserted purporting or attempting, by way of direction, declaration, or otherwise, to forbid a tenant for life to exercise any power under this Act, or attempting, or tending, or intended, by a limitation, gift, or disposition over of settled land, or by a limitation, gift, or disposition of other real or any personal property, or by the imposition of any condition, or by forfeiture, or in any other manner whatever, to prohibit or prevent him from exercising, or to induce him to abstain from exercising, or to put him into a position inconsistent with his exercising, any power under this Act, that provision, as far as it purports, or

has assigned a share of his estate to a remainderman so as to merge it is nevertheless able to make a title to the entire settled estate with the consent of his assignees; and as to merger generally, see *Snow* v. *Boycott*, [1892] 3 Ch. 110. As to assignments or charges in consideration of marriage or by way of family arrangement, see S. L. Act, 1890 (App. XI., *infra*), s. 4; and *Re The Ailesbury S. E.*, W. N. 1893, p. 140.

(*a*) Compare *Hardaker* v. *Moorhouse*, 26 Ch. D. 417; *Re Cooper, Cooper* v. *Slight*, 27 Ch. D. 565; and *Re Bedingfeld & Herring's Contract*, [1893] 2 Ch. 332. As to a sale of the mansion-house by a tenant for life whose estate is mortgaged to its full value, see *Re Sebright's S. E.*, 33 Ch. D. 429; and as to the consent of a mortgagee of the life estate being sufficient, and his concurrence in the conveyance unnecessary, *Re Dickin & Kelsall's Contract*, [1908] 1 Ch. 213; *Re Davies & Kent's Contract*, [1910] 2 Ch. 35; and see as to costs of assignees, *Cardigan* v. *Curzon-Howe*, 40 Ch. D. 338; 41 Ch. D. 375; and as to their rights under the Settled Estates Act, 1877 (40 & 41 Vict. c. 18), see *Re Ebsworth & Tidy's Contract*, 42 Ch. D. 23.

attempts, or tends, or is intended to have, or would or might have, the operation aforesaid, shall be deemed to be void (*a*). 45 & 46 Vict. c. 38.

(2.) For the purposes of this section an estate or interest limited to continue so long only as a person abstains from exercising any power shall be and take effect as an estate or interest to continue for the period for which it would continue if that person were to abstain from exercising the power, discharged from liability to determination or cesser by or on his exercising the same.

Provision against forfeiture.

52. Notwithstanding anything in a settlement, the exercise by the tenant for life of any power under this Act shall not occasion a forfeiture (*b*).

Tenant for life trustee for all parties interested.

53. A tenant for life shall, in exercising any power under this Act, have regard to the interests of all parties entitled under the settlement, and shall, in relation to the exercise thereof by him, be deemed to be in the position and to have the duties and liabilities of a trustee for those parties (*c*).

(*a*) As to the object of this section, "which is undoubtedly retrospective," see *per* Lord Selborne, C., *Re Hazle's S. E.*, 29 Ch. D. 78, 84. It seems that a limitation over on failure to comply with a condition for residence in a dwelling-house on the estate is void under this section: *Re Paget's S. E.*, 30 Ch. D. 161; *Re Eastman's S. E.*, W. N. 1898, p. 170; and *Re Richardson*, [1904] 2 Ch. 777 (condition to provide a home in the house); and cf. *Re Ames*, [1893] 2 Ch. 479; *Re Smith*, [1899] 1 Ch. 331 (gift over of personal estate in case of sale of the real estate). But see *Re Haynes*, 37 Ch. D. 306, in which it was held that though such a limitation cannot prevent the exercise of the powers of disposition given by the Act, yet it takes effect if no such disposition is made. And this decision has been followed in *Re Trenchard*, [1902] 1 Ch. 378. And see *Re Thompson*, 21 L. R. (Ir.) 109; *Re Sudbury & Poynton's Estates*, [1893] 3 Ch. 74, and *Re Edwards' Settlement*, [1897] 2 Ch. 412. The statutory powers are exerciseable without the sanction of the Court, notwithstanding an administration order: *Cardigan* v. *Curzon-Howe*, 30 Ch. D. 531.

(*b*) See note to sect. 51.

(*c*) A tenant for life will not be restrained from selling on merely speculative evidence of an unexpected future increase in value: *Thomas* v. *Williams*, 24 Ch. D. 558; but he would be if he proposed to sell the property "infinitely below its real value": *Wheelwright* v. *Walker*, 23 Ch. D. 752, 762. As to how far a tenant for life is, strictly speaking, a trustee, and as to the meaning of the section generally, see *Duke of Marlborough* v. *Marjoribanks*, 32 Ch. D. 1; *Cardigan* v. *Curzon-Howe*, 41 Ch. D. 375, 379; *Re Lord Stamford's S. E.*, 43 Ch. D. 84, 91; *Re Lord Stamford's Estate*, 56 L. T. 484; *Re Earl of Radnor's Will Trusts*, 45 Ch. D. 402; *Re Marquis of Ailesbury's S. E.*, [1892] 1 Ch. 506; *Hampden* v. *Earl of Buckinghamshire* (as to mortgaging), [1893] 2 Ch. 531; *Dowager Duchess of Sutherland* v. *Duke of Sutherland*, [1893] 3 Ch. 169; *Gilbey* v. *Rush*, [1905] W. N. 153; *Re Hunt's S. E.*, [1905] 2 Ch. 418; [1906] 2 Ch. 11. See also *Chandler* v. *Bradley*, cited under sect. 7, where the tenant for life took a bribe; *Re Handman and Wilcox's Contract*, [1902] 1 Ch. 599; *Middlemas* v. *Stevens*, [1901] 1 Ch. 574; and *Re Earl Somers, deceased*, 11 Times L. R. 567, where a tenant for life was restrained from dealing with a public-house with the object of promoting her private views on temperance.

45 & 46 Vict. c. 38.

General protection of purchasers, &c.

54. On a sale, exchange, partition, lease, mortgage, or charge, a purchaser, lessee, mortgagee, or other person dealing in good faith with a tenant for life shall, as against all parties entitled under the settlement, be conclusively taken to have given the best price, consideration, or rent, as the case may require, that could reasonably be obtained by the tenant for life, and to have complied with all the requisitions of this Act (*a*).

Exercise of powers; limitation of provisions, &c.

55.—(1.) Powers and authorities conferred by this Act on a tenant for life or trustees or the Court or the Land Commissioners (*b*) are exerciseable from time to time.

(2.) Where a power of sale, enfranchisement, exchange, partition, leasing, mortgaging, charging, or other power is exercised by a tenant for life, or by the trustees of a settlement, he and they may respectively execute, make, and do all deeds, instruments, and things necessary or proper in that behalf.

(3.) Where any provision in this Act refers to sale, purchase, exchange, partition, leasing, or other dealing, or to any power, consent, payment, receipt, deed, assurance, contract, expenses (*c*), act, or transaction, the same shall be construed to extend only (unless it is otherwise expressed) to sales, purchases, exchanges, partitions, leasings, dealings, powers, consents, payments, receipts, deeds, assurances, contracts, expenses, acts, and transactions, under this Act.

Saving for other powers.

56.—(1.) Nothing in this Act shall take away, abridge, or prejudicially affect any power for the time being subsisting under a settlement, or by statute or otherwise, exerciseable by a tenant for life, or by trustees with his consent, or on his request, or by his direction, or otherwise; and the powers given by this Act are cumulative (*d*).

(2.) But in case of conflict between the provisions of a settlement and the provisions of this Act, relative to any matter in respect whereof the tenant for life exercises or contracts or intends to exercise any power under this Act, the provisions of this Act shall prevail (*e*); and, accordingly, notwithstanding anything in the

(*a*) See *Hatten* v. *Russell*, 38 Ch. D. 334; *Hurrell* v. *Littlejohn*, [1904] 1 Ch. 689.

(*b*) Now the Board of Agriculture and Fisheries (52 & 53 Vict. c. 30; 3 Edw. 7, c. 31).

(*c*) See *Re Smith's S. E.*, [1891] 3 Ch. 65.

(*d*) See the *Duke of Newcastle's Estates*, 24 Ch. D. 129; *Re Mansel's S. E.*, W. N. 1884, p. 209, where the tenant for life was bankrupt, and stated to have contumaciously refused to exercise his statutory powers.

(*e*) See *Clarke* v. *Thornton*, 35 Ch. D. 307, 315 (where capital money was ordered to be applied in improvements although the settlement provided that improvements should be made out of income); *Re Lord Stam-*

settlement, the consent of the tenant for life (*a*) shall, by virtue of this Act, be necessary to the exercise by the trustees of the settlement or other person of any power (*b*) conferred by the settlement exerciseable for any purpose provided for in this Act. 45 & 46 Vict. c. 38.

(3.) If a question arises, or a doubt is entertained, respecting any matter within this section, the Court may, on the application of the trustees of the settlement, or of the tenant for life, or of any other person interested, give its decision, opinion, advice, or direction thereon.

Additional or larger powers by settlement.

57.—(1.) Nothing in this Act shall preclude a settlor from conferring on the tenant for life, or the trustees of the settlement, any powers additional to or larger than those conferred by this Act.

(2.) Any additional or larger powers so conferred shall, as far as may be, notwithstanding anything in this Act, operate and be exerciseable in the like manner, and with all the like incidents, effects, and consequences, as if they were conferred by this Act, unless a contrary intention is expressed in the settlement.

XIII.—Limited Owners Generally.

LIMITED OWNERS GENERALLY.

58.—(1.) Each person as follows shall, when the estate or interest of each of them is in possession (*c*), have the powers of a tenant for

ford's S. E., 56 L. T. 484, both these cases being distinguished in *Re Partington*, [1902] 1 Ch. 711; *Re Chaytor's S. E. Act*, 25 Ch. D. 651 (powers of tenant for life under S. L. Act prevail over powers given by prior private Act); *Re Barrs-Haden's S. E.*, 32 W. R. 194; 49 L. T. 660 (power of Court to stay proceedings upon order for sale made under Settled Estates Act, 1877); *Re Poole*, 32 W. R. 956; 50 L. T. 585 (as to order authorising trustees to make lease under that Act); *Re Osborne & Bright's, Limited*, [1902] 1 Ch. 335 (power of sale over the whole estate in trustees, and settlement of undivided shares). See also *Earl of Lonsdale* v. *Lowther*, [1900] 2 Ch. 687; *Talbot* v. *Scarisbrick*, [1908] 1 Ch. 812, where the trustees had powers of management under a private Act of Parliament, and the consent of the tenant for life to their exercise was held unnecessary.

(*a*) See the Settled Land Act, 1884 (App. VIII., *infra*, s. 6, and note that sub-sect. (1) of that section applies only to cases within sect. 63 of the Settled Land Act, 1882, and does not affect the present section). As to consent of the tenant for life, see *Re Clitheroe Estate*, 28 Ch. D. 378; 31 Ch. D. 135; *Re Atherton*, W. N. 1891, p. 85.

(*b*) As distinguished from *trust*; see *Taylor* v. *Poncia*, 25 Ch. D. 646.

(*c*) *I.e.*, as distinguished from remainder or reversion, no distinction being drawn as regards a person in possession personally or by his guardian if an infant: *Re Morgan*, 24 Ch. D. 114. See also *Re Atkinson*, 30 Ch. D. 605; 31 Ch. D. 577; *Re Clitheroe*, 31 Ch. D. 135 (observed upon in *Re De Hoghton*, [1896] 1 Ch. 855); *Re Strangways*, 34 Ch. D. 423, *supra*, p. 837, note (*d*) to sect. 2, sub-sect. 5.

45 & 46 Vict. c. 38.

Enumeration of other limited owners, to have powers of tenant for life.

life under this Act, as if each of them were a tenant for life as defined in this Act (namely):

(i.) A tenant in tail, including a tenant in tail who is by Act of Parliament restrained from barring or defeating his estate tail, and although the reversion is in the Crown, and so that the exercise by him of his powers under this Act shall bind the Crown, but not including such a tenant in tail where the land in respect whereof he is so restrained was purchased with money provided by Parliament in consideration of public services (*a*):

(ii.) A tenant in fee simple, with an executory limitation, gift, or disposition over, on failure of his issue, or in any other event (*b*):

(iii.) A person entitled to a base fee (*c*), although the reversion is in the Crown, and so that the exercise by him of his powers under this Act shall bind the Crown:

(iv.) A tenant for years determinable on life, not holding merely under a lease at a rent (*d*):

(v.) A tenant for the life of another, not holding merely under a lease at a rent (*e*):

(vi.) A tenant for his own or any other life, or for years determinable on life, whose estate is liable to cease in any

(*a*) As to clause (1), see *Re Bolton's Estates Act*, 1863, [1904] 2 Ch. 289; and cf. *Att.-Gen.* v. *Duke of Richmond*, [1907] 2 K. B. 940.

(*b*) See *Re Morgan*, 24 Ch. D. 114, where an infant tenant in fee with an executory limitation over was held to have the powers of a tenant for life, and the trustees of the will were appointed trustees for the purposes of the Act, pursuant to sect. 60; and also *Re James*, 32 W. R. 898; W. N. 1884, p. 172, where two infant children, taking in certain events and by substitution under a clause to that effect in a will the share which their parent would have taken had he survived the testator, were held to have like powers; and *Re Richardson*, [1904] 2 Ch. 777, where there was a gift in fee with a limitation over on non-compliance with a condition as to residence.

(*c*) See *Re Morshead's S. E.*, W. N. 1893, p. 180.

(*d*) In *Re Hazle's S. E.*, 26 Ch. D. 428; 29 Ch. D. 78, it was decided that a woman entitled under a will to receive the rent of a house, let on lease for thirty-one years, during the remainder of the term if she should so long live, was not a person having the powers of a tenant for life within either this sub-section or sub-sect. vi.

(*e*) In *Vine* v. *Raleigh*, [1896] 1 Ch. 37, executrixes of a deceased next of kin and surviving next of kin entitled to the receipt of rents through the operation of the Thellusson Act were held to have the powers of a tenant for life by virtue of this clause. But it was decided by Swinfen Eady, J., in *Re Jemmett & Guest's Contract*, [1907] 1 Ch. 629, that sect. 58 applies only to beneficial owners, and that trustees with an estate *pur autre vie* did not come within sub-sect. 1 (v.). See also *Re Bennet*, [1903] 2 Ch. 136, where annuitants entitled between them to rents and profits were held to come within the section; and *Re Hunter & Hewlett's Contract*, [1907] 1 Ch. 46.

event during that life, whether by expiration of the estate, or by conditional limitation, or otherwise, or to be defeated by an executory limitation, gift, or disposition over (*a*), or is subject to a trust for accumulation of income for payment of debts or other purpose:

(vii.) A tenant in tail after possibility of issue extinct:

(viii.) A tenant by the curtesy (*b*):

(ix.) A person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life, whether subject to expenses of management or not, or until sale of the land, or until forfeiture of his interest therein on bankruptcy or other event (*c*).

[(*a*) See *Re Hazle's S. E.*, 26 Ch. D. 428; 29 Ch. D. 78; *Re Paget's S. E.*, 30 Ch. D. 161 (see sect. 51, and note (*a*), *supra*, p. 875), where a person whose estate was forfeitable in case of non-residence was held to be tenant for life; and cf. *Re Edwards' Settlement*, [1897] 2 Ch. 412; *Re Eastman's S. E.*, W. N. 1898, p. 170; *Re Carne's S. E.*, [1899] 1 Ch. 324 (where the property was vested in trustees for a term to permit the plaintiff to occupy rent free so long as she might wish to continue to do so); and *Re Baroness Llanover's Will*, [1903] 2 Ch. 16 (where the trustees had extensive powers of management); and *Re Pollock*, [1906] 1 Ch. 146 (where the life tenant's income was charged with the maintenance of her children). For cases held not within the section, see *Re Atkinson*, 31 Ch. D. 577, and *Re Strangways*, 34 Ch. D. 423 (trust to accumulate rents for twenty years and then to convey to use of A. for life, &c.). As to the position of an heir-at-law entitled for life by reason of the cesser under the Thellusson Act of a trust for accumulation, see *Re Atherton*, W. N. 1891, p. 85; and cf. *Williams* v. *Jenkins*, [1893] 1 Ch. 700; *Re Llanover*, [1907] 1 Ch. 635.

(*b*) See the Settled Land Act, 1884 (App. VIII., *infra*), s. 8; *Mogridge* v. *Clapp*, [1892] 3 Ch. 382. Sect. 58 does not include a dowress, and apparently there is in her case no settlement or tenancy for life under the Act; but sect. 46 of the Settled Estates Act, 1877 (40 & 41 Vict. c. 18), gives to a person entitled to the possession or to the receipt of the rents and profits of unsettled estates as tenant in dower a power of leasing for twenty-one years in England and for thirty-five in Ireland.

(*c*) See *Re Jones*, 24 Ch. D. 583; 26 Ch. D. 736; *Re Clitheroe Estate*, 28 Ch. D. 378; 31 Ch. D. 135; *Cookes* v. *Cookes*, W. N. 1885, p. 177; *Cardigan* v. *Curzon-Howe*, 30 Ch. D. 531; *Clarke* v. *Thornton*, 35 Ch. D. 307; *Re Baroness Llanover's Will*, *ubi supra*; and *Re Pocock & Prankerd's Contract*, [1896] 1 Ch. 302, for instances of cases of tenants for life within this clause. And cf. *Re Llanover*, [1907] 1 Ch. 635, where it was held that clause (ix.) does not apply to terminable life interests or to interests taken under an intestacy. But where the trust is discretionary, it would seem that there may be no person having the powers of a tenant for life; see *Re Atkinson*, 30 Ch. D. 605; 31 Ch. D. 577; and so where, subject to maintenance, the rents are to be accumulated for persons who shall attain a given age so that there is no present vested interest: *Re Horne's S. E.*, 39 Ch. D. 84. See also p. 888, *infra*, note (*b*). It appears from these cases that the operation of the Settled Land Acts might be avoided by limiting to the person who would otherwise have been tenant for life an annuity for his life, and creating a discretionary trust of the remainder of the rents and profits during his life. Since the Act a tenant

45 & 46 Vict. c. 38.

(2.) In every such case, the provisions of this Act referring to a tenant for life, either as conferring powers on him or otherwise, and to a settlement, and to settled land, shall extend to each of the persons aforesaid, and to the instrument under which his estate or interest arises, and to the land therein comprised (*a*).

(3.) In any such case any reference in this Act to death as regards a tenant for life shall, where necessary, be deemed to refer to the determination by death or otherwise of such estate or interest as last aforesaid.

INFANTS; MARRIED WOMEN; LUNATICS.

XIV.—Infants; Married Women; Lunatics.

Infant absolutely entitled to be as tenant for life.

59. Where a person, who is in his own right seised of or entitled in possession to land, is an infant, then for purposes of this Act the land is settled land, and the infant shall be deemed tenant for life thereof (*b*).

Tenant for life, infant.

60. Where a tenant for life, or a person having the powers of a tenant for life under this Act, is an infant, or an infant would, if he were of full age, be a tenant for life, or have the powers of a tenant for life under this Act, the powers of a tenant for life under this Act (*c*) may be exercised on his behalf by the trustees of the

for life subject to overriding trusts or a term is more freely let into possession under the discretionary jurisdiction of the Court than was the case before the Act, the Court taking security in the shape of an undertaking or otherwise for the protection of other persons interested. See *Re Richardson*, [1900] 2 Ch. 779; *Re Money Kyrle's Settlement*, *ib.* 839.

(*a*) By the Glebe Lands Act, 1888 (51 & 52 Vict. c. 20), s. 8 (4), on a sale under that Act by an incumbent the provisions of the Settled Land Act are to apply as if he were tenant for life.

(*b*) This section extends to the case of an infant next of kin entitled in possession to a share of partnership land under the intestacy of one of the partners: *Re Wells*, W. N. 1883, p. 111; 31 W. R. 764; and an infant whose estate is equitable and liable to be divested by death under twenty-one: *Re James*, 32 W. R. 898; *Re Morgan*, 24 Ch. D. 114; but not to that of an infant contingently entitled: *Re Horne's S. E.*, 39 Ch. D. 84. In such a case the infant's estate may be a settled estate within the Settled Estates Act, 1877, by virtue of sect. 41 of the Conveyancing Act, 1881, so as to enable a sale to be effected under the former Act: *Re Sparrow's S. E.*, [1892] 1 Ch. 412. See also *Re Simpson*, [1897] 1 Ch. 257, where there was an infant co-owner domiciled in Australia, and the Court appointed trustees resident in the colony.

(*c*) Including consents under this Act: *Re Duke of Newcastle's Settlement*, 24 Ch. D. 129. In *Re Grey's Court Estate*, W. N. 1901, p. 60, Farwell, J., expressed the opinion that by virtue of this section the trustees of the settlement are empowered to prepare a scheme of improvements under sect. 26 on behalf of the infant tenant for life, and to approve it on their own behalf.

settlement, and if there are none, then by such person and in such manner as the Court, on the application of a testamentary or other guardian or next friend of the infant, either generally or in a particular instance, orders (*a*). 45 & 46 Vict. c. 38.

61.—(1.) The foregoing provisions of this Act do not apply in the case of a married woman. Married woman, how to be affected (*b*).

(2.) Where a married woman who, if she had not been a married woman, would have been a tenant for life, or would have had the powers of a tenant for life under the foregoing provisions of this Act, is entitled for her separate use, or is entitled under any statute, passed or to be passed, for her separate property, or as a feme sole, then she, without her husband, shall have the powers of a tenant for life under this Act.

(3.) Where she is entitled otherwise than as aforesaid, then she and her husband together shall have the powers of a tenant for life under this Act.

(4.) The provisions of this Act referring to a tenant for life and a settlement and settled land shall extend to the married woman without her husband, or to her and her husband together, as the case may require, and to the instrument under which her estate or interest arises, and to the land therein comprised.

(5.) The married woman may execute, make, and do all deeds, instruments, and things necessary or proper for giving effect to the provisions of this section.

(6.) A restraint on anticipation in the settlement shall not prevent the exercise by her of any power under this Act.

62. Where a tenant for life, or a person having the powers of a tenant for life under this Act, is a lunatic, so found by inquisition, the committee of his estate may, in his name and on his behalf, under an order of the Lord Chancellor, or other person entrusted by Tenant for life lunatic.

(*a*) See cases cited *supra*, p. 878, note (*b*), as to sect. 58 (ii.), and *Re Powell's Trusts*, W. N. 1884, p. 67. The sale may be authorised to be made out of Court: *Re Price*, 27 Ch. D. 552. It is sufficient to appoint a person to exercise the powers without appointing trustees, but the purchase-money must be paid into Court: *Re Dudley*, 35 Ch. D. 338. The practice, it seems, is not to appoint a person to exercise powers under sect. 60, but to appoint trustees. In *Cecil* v. *Langdon*, 54 L. T. 418, where the infant was tenant in tail, aged 18, the trustees were authorised to grant leases for 200 years, but subject to the approval of the Court as to each lease. In *Re Greenville Estate*, 11 L. R. (Ir.) 138, the Court refused to appoint a co-owner as the person to exercise the powers.

(*b*) See as to this section generally, *Bates* v. *Kesterton*, [1896] 1 Ch. 159, where it was decided that a married woman entitled in fee for her separate use subject to a restraint on anticipation was not a tenant for life or a person having the powers of a tenant for life within the meaning of the Act.

45 & 46 Vict. c. 38.

virtue of the Queen's Sign Manual with the care and commitment of the custody of the persons and estates of lunatics, exercise the powers of a tenant for life under this Act; and the order may be made on the petition of any person interested in the settled land, or of the committee of the estate (*a*).

SETTLEMENT BY WAY OF TRUSTS FOR SALE.

XV.—Settlement by way of Trusts for Sale (*b*).

Provision for case of trust to sell and re-invest in land.

63.—(1.) Any land, or any estate or interest in land, which under or by virtue of any deed, will, or agreement, covenant to surrender, copy of court roll, Act of Parliament, or other instrument or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act is subject to a trust (*c*) or direction for sale of that land, estate,

(*a*) There must be trustees, who must be served with notices under sect. 45, *Re Taylor*, W. N. 1883, p. 95; 31 W. R. 596. And the lunatic must be so found, and have a committee: *Re Baggs*, [1894] 2 Ch. 416; *Re S. S. B.*, [1906] 1 Ch. 712; in which, however, a distinction was recognised as regards the power of leasing conferred by the Act, and *Re Salt*, [1896] 1 Ch. 117, where the power was held exerciseable in the case of a lunatic not so found by virtue of the Lunacy Act, 1890, s. 120 (*h*), was reconciled: and see *Re De Moleyns' & Harris's Contract*, [1908] 1 Ch. 110. The committee cannot give a valid notice without the authority of an order in lunacy: *Re Ray's S. E.*, 25 Ch. D. 464. Leave was given to the committee to sell a lunatic's share to the owner of the other shares in *Re Gaitskell*, 40 Ch. D. 416. The Court in lunacy has jurisdiction to authorise a committee exercising on behalf of a lunatic the power of sale given by the Act to enter on his behalf into the usual covenants for title: *Re Ray*, [1896] 1 Ch. 468.

(*b*) See the Settled Land Act, 1884 (App. VIII., *infra*), s. 6, sub-s. 1 (giving statutory effect to the construction of sects. 56 and 63 of the present Act adopted in *Taylor* v. *Poncia*, 25 Ch. D. 646), and sect. 7, and note, *infra*, p. 888. The result is that the trustees can sell without the consent of the tenant for life (where such consent is not required by the terms of the settlement: see S. L. A., 1884, *ubi supra*), unless an order has been obtained giving leave to exercise the powers conferred by sect. 63. See *Re Harding's Estate*, [1891] 1 Ch. 60, in which leave was given to the tenants for life under sect. 7 of the Act of 1884. And cf. *Re Bagot's Settlement*, [1894] 1 Ch. 177. In determining whether land vested in trustees on an absolute trust for sale is within sect. 63 of the present Act, the Court must look simply at the instrument which created the trust: *Re Earle & Webster's Contract*, 24 Ch. D. 144. Such a trust may be implied: *Re Garnett-Orme & Hargreaves' Contract*, 25 Ch. D. 595. In *Re Child's Settlement*, [1907] 2 Ch. 348, where land had been purchased under a power in a personalty settlement, it was held that the case was within this section. See also *Re Wormald*, [1908] W. N. 214. As to the effect of sect. 11 of S. L. A., 1882, upon cases within sect. 63, see *Re Ridge*, 31 Ch. D. 504 (stated *supra*, p. 845).

(*c*) It has been held that the trust must be immediate: *Re Horne*, 39 Ch. D. 84. A trust for sale that may never arise, *e.g.*, a trust to sell on the request of the tenant for life, is apparently not within the section, see *Re Goodall's Settlement*, [1909] 1 Ch. 440. But a trust for sale exerciseable only with the consent of the tenant for life has been held within it. *Re Wagstaff's S. E.*, [1909] 2 Ch. 201.

or interest, and for the application or disposal of the money to arise from the sale, or the income of that money, or the income of the land until sale, or any part of that money or income, for the benefit of any person for his life, or any other limited period, or for the benefit of two or more persons concurrently for any limited period (*a*), and whether absolutely, or subject to a trust for accumulation of income for payment of debts or other purpose, or to any other restriction, shall be deemed to be settled land, and the instrument or instruments under which the trust arises shall be deemed to be a settlement; and the person for the time being beneficially entitled to the income of the land, estate, or interest aforesaid until sale, whether absolutely or subject as aforesaid, shall be deemed to be tenant for life thereof; or if two or more persons are so entitled concurrently, then those persons shall be deemed to constitute together the tenant for life thereof; and the persons, if any, who are for the time being under the settlement trustees for sale of the settled land, or having power of consent to, or approval of, or control over the sale, or if under the settlement there are no such trustees, then the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for purposes of this Act are for purposes of this Act trustees of the settlement. 45 & 45 Vict. c. 38.

(2.) In every such case the provisions of this Act referring to a tenant for life, and to a settlement and to settled land, shall extend to the person or persons aforesaid, and to the instrument or instruments under which his or their estate or interest arises, and to the land therein comprised, subject and except as in this section provided (that is to say):

(i.) Any reference in this Act to the predecessors or successors in title of the tenant for life, or to the remaindermen, or reversioners or other persons interested in the settled land, shall be deemed to refer to the persons interested in succession or otherwise in the money to arise from sale of the land, or the income of that money, or the income of the land, until sale (as the case may require).

(ii.) Capital money arising under this Act from the settled land shall not be applied in the purchase of land unless such application is authorised by the settlement in the case of capital money arising thereunder from sales or other dispositions of the settled land, but may, in addition to any other mode of application authorised by this Act, be applied in any mode in which capital money arising under the settlement from any such sale or other dis-

(*a*) See *Re Powell*, W. N. 1884, p. 67.

45 & 46 Vict. c. 38.

position is applicable thereunder, subject to any consent required or direction given by the settlement with respect to the application of trust money of the settlement.

(iii.) Capital money arising under this Act from the settled land and the securities in which the same is invested, shall not for any purpose of disposition, transmission, or devolution be considered as land unless the same would, if arising under the settlement from a sale or disposition of the settled land, have been so considered, and the same shall be held in trust for and shall go to the same persons successively in the same manner, and for and on the same estates, interests, and trusts as the same would have gone and been held if arising under the settlement from a sale or disposition of the settled land, and the income of such capital money and securities shall be paid or applied accordingly.

(iv.) Land of whatever tenure acquired under this Act by purchase, or in exchange, or on partition, shall be conveyed to and vested in the trustees of the settlement, on the trusts, and subject to the powers and provisions which, under the settlement or by reason of the exercise of any power of appointment or charging therein contained, are subsisting with respect to the settled land, or would be so subsisting if the same had not been sold, or as near thereto as circumstances permit, but so as not to increase or multiply charges or powers of charging.

REPEALS.

XVI.—Repeals.

Repeal of enactments in schedule.

64.—(1.) The enactments described in the Schedule to this Act are hereby repealed.

(2.) *The repeal by this Act of any enactment shall not affect any right accrued or obligation incurred thereunder before the commencement of this Act; nor shall the same affect the validity or invalidity, or any operation, effect, or consequence, of any instrument executed or made, or of anything done or suffered, or of any order made before the commencement of this Act; nor shall the same affect any action, proceeding, or thing then pending or uncompleted; and every such action, proceeding, and thing may be carried on and completed as if there had been no such repeal in this Act* (*a*).

(*a*) This section has been repealed by the Statute Law Revision Act, 1898.

XVII.—Ireland (*a*).

45 & 46 Vict. c. 38.

IRELAND.

Modifications respecting Ireland.

65.—(1.) In the application of this Act to Ireland the foregoing provisions shall be modified as in this section provided.

(2.) The Court shall be Her Majesty's High Court of Justice in Ireland.

(3.) All matters within the jurisdiction of that Court shall, subject to the Acts regulating that Court, be assigned to the Chancery Division of that Court; but General Rules under this Act for Ireland may direct that those matters or any of them be assigned to the Land Judges of that Division.

(4.) Any deed inrolled under this Act shall be inrolled in the Record and Writ Office of that Division.

(5.) General Rules for purposes of this Act for Ireland shall be deemed Rules of Court within the Supreme Court of Judicature Act (Ireland), 1877, and may be made accordingly, *at any time after the passing of this Act, to take effect on or after the commencement of this Act* (*b*).

40 & 41 Vict. c. 57.

(6.) The several Civil Bill Courts in Ireland shall, in addition to the jurisdiction possessed by them independently of this Act, have and exercise the power and authority exerciseable by the Court under this Act, in all proceedings where the property, the subject of the proceedings, does not exceed in capital value five hundred pounds, or in annual value thirty pounds.

(7.) The provisions of Part II. of the County Officers and Courts (Ireland) Act, 1877, relative to the equitable jurisdiction of the Civil Bill Courts, shall apply to the jurisdiction exerciseable by those Courts under this Act.

40 & 41 Vict. c. 56.

(8.) Rules and Orders for purposes of this Act, as far as it relates to the Civil Bill Courts, may be made *at any time after the passing of this Act, to take effect on or after the commencement of this Act*, in manner prescribed by section seventy-nine of the County Officers and Courts (Ireland) Act, 1877 (*b*).

(9.) The Commissioners of Public Works in Ireland shall be substituted for the Land Commissioners.

(10.) The term for which a lease other than a building or mining lease may be granted shall be not exceeding thirty-five years.

(*a*) See 48 & 49 Vict. c. 73, ss. 3, 5, 6, 10, 13; 50 & 51 Vict. c. 33, ss. 8 (6), 10, 14 (1).

(*b*) The words in italics have been repealed by the Statute Law Revision Act, 1898.

45 & 46 Vict. c. 38.

Section 64.

THE SCHEDULE (*a*).

Repeals.

23 & 24 *Vict. c.* 145 . . . *in part.*	*An Act to give to trustees, mortgagees, and others, certain powers now commonly inserted in settlements, mortgages and wills* . .	*in part; namely,*— *Parts I. and IV.* (*being so much of the Act as is not repealed by the Conveyancing and Law of Property Act,* 1881).
27 & 28 *Vict. c.* 114 . . . *in part.*	*The Improvement of Land Act,* 1864 . .	*in part; namely,*— *Sections seventeen and eighteen: Section twenty-one, from "either by a party" to "benefice or" (inclusive); and from "or if the landowner" to "minor or minors" inclusive; and "or circumstance" twice: Except as regards Scotland.*
40 & 41 *Vict. c.* 18 . . . *in part.*	*The Settled Estates Act,* 1877	*in part; namely,*— *Section seventeen.*

(*a*) This Schedule has been repealed by the Statute Law Revision Act, 1898.

APPENDIX VIII.

47 & 48 VICT. CAP. 18.

47 & 48 VICT. c. 18.

AN ACT TO AMEND THE SETTLED LAND ACT, 1882.

[*3rd July*, 1884.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as the Settled Land Act, 1884.

Interpretation.

2. The expression "the Act of 1882" used in this Act means the Settled Land Act, 1882.

Construction of Act.

3. The Act of 1882 and this Act are to be read and construed together as one Act, and expressions used in this Act are to have the same meanings as those attached by the Act of 1882 to similar expressions used therein.

Fine on a lease to be capital money.

4. A fine (*a*) received on the grant of a lease under any power conferred by the Act of 1882 is to be deemed capital money arising under that Act.

Notice under 45 & 46 Vict. c. 38, s. 45, may, as to a sale, exchange, partition, or lease, be general.

5.—(1.) The notice required by section forty-five of the Act of 1882 of intention to make a sale, exchange, partition, or lease (*b*) may be notice of a general intention in that behalf.

(2.) The tenant for life is, upon request by a trustee of the settlement, to furnish to him such particulars and information as may reasonably be required by him from time to time with reference to sales, exchanges, partitions, or leases effected, or in progress, or immediately intended.

(3.) Any trustee, by writing under his hand, may waive notice either in any particular case, or generally, and may accept less than one month's notice.

(*a*) See *Chandler* v. *Bradley*, [1897] 1 Ch. 315, where the gift of a sum of money to the tenant for life as an inducement to grant a lease was held not to be in the nature of a fine, and the lease was declared void as against the remaindermen.

(*b*) But specific notice is still necessary as to mortgages or charges; see *Re Ray's S. E.*, 25 Ch. D. 464.

47 & 48 Vict. c. 18.

(4.) This section applies to a notice given before, as well as to a notice given after, the passing of this Act.

(5.) Provided that a notice to the sufficiency of which objection has been taken before the passing of this Act, is not made sufficient by virtue of this Act.

As to consents of tenant for life.

6.—(1.) In the case of a settlement within the meaning of section sixty-three of the Act of 1882, any consent not required by the terms of the settlement is not by force of anything contained in that Act to be deemed necessary to enable the trustees of the settlement, or any other person, to execute any of the trusts or powers created by the settlement.

(2.) In the case of every other settlement, not within the meaning of section sixty-three of the Act of 1882, where two or more persons together constitute the tenant for life for the purposes of that Act, then, notwithstanding anything contained in sub-section (2) of section fifty-six of that Act, requiring the consent of all those persons, the consent of one only of those persons is by force of that section to be deemed necessary to the exercise by the trustees of the settlement, or by any other person, of any power conferred by the settlement exerciseable for any purpose provided for in that Act (*a*).

(3.) This section applies to dealings before, as well as after, the passing of this Act.

Powers given by s. 63 to be exercised only with leave of the Court (*b*).

7. With respect to the powers conferred by section sixty-three of the Act of 1882, the following provisions are to have effect:—

(i.) Those powers are not to be exercised without the leave of the Court (*c*).

(ii.) The Court may by order, in any case in which it thinks fit, give leave to exercise all or any of those powers, and the order is to name the person or persons to whom leave is given.

(iii.) The Court may from time to time rescind, or vary, any

(*a*) See *Re Osborne & Bright's, Limited*, [1902] 1 Ch. 335, where trustees of a will had a power of sale over the whole estate, and the undivided shares were settled.

(*b*) Query whether these powers (S. L. A., 1882, s. 63, *supra*, p. 882) are not also in effect conferred by sect. 58 (1), (ix.), p. 879, *supra*, which may be thought to have rendered sect. 63 superfluous. (Cf. *Re Child's Settlement*, [1907] 2 Ch. 348.) But, by whichever section conferred, they cannot (it is presumed) be exercised without the leave of the Court. For a case in which leave was given to the tenant for life, see *Re Harding's Estate*, [1891] 1 Ch. 60, where the effect of sects. 6 and 7 is discussed. As to vacating registration of a writ or order affecting land, see S. L. Act, 1890 (App. XI., *infra*), s. 19.

(*c*) In *Re Daniell's S. E.*, [1894] 3 Ch. 503, the Court, in the exercise of its discretion under this clause, refused its sanction to a proposed lease.

order made under this section, or may make any new or further order.

(iv.) So long as an order under this section is in force, neither the trustees of the settlement, nor any person other than a person having the leave, shall execute any trust or power created by the settlement, for any purpose for which leave is by the order given to exercise a power conferred by the Act of 1882.

(v.) An order under this section may be registered and re-registered, as a lis pendens, against the trustees of the settlement named in the order, describing them on the register as "Trustees for the purposes of the Settled Land Act, 1882."

(vi.) Any person dealing with the trustees from time to time, or with any other person acting under the trusts or powers of the settlement, is not to be affected by an order under this section, unless and until the order is duly registered, and when necessary re-registered, as a lis pendens.

(vii.) An application to the Court under this section may be made by the tenant for life, or by the persons who together constitute the tenant for life, within the meaning of section sixty-three of the Act of 1882.

(viii.) An application to rescind or vary an order, or to make any new or further order under this section, may be made also by the trustees of the settlement, or by any person beneficially interested under the settlement.

(ix.) The person or persons to whom leave is given by an order under this section shall be deemed the proper person or persons to exercise the powers conferred by section sixty-three of the Act of 1882, and shall have, and may exercise those powers accordingly.

(x.) This section is not to affect any dealing which has taken place before the passing of this Act, under any trust or power to which this section applies.

Curtesy to be deemed to arise under settlement.

8. For the purposes of the Act of 1882 the estate of a tenant by the curtesy is to be deemed an estate arising under a settlement made by his wife (*a*).

(*a*) See S. L. Act, 1882 (App. VII., *supra*), s. 58 (1), viii.; and *Bates* v. *Kesterton*, [1896] 1 Ch. 159.

APPENDIX IX.

50 & 51 Vict. c. 30.

50 & 51 VICT. CAP. 30.

AN ACT TO AMEND THE SETTLED LAND ACT, 1882.

[23*rd August*, 1887.]

45 & 46 Vict. c. 38.

Whereas by the twenty-first section of the Settled Land Act, 1882 (*in this Act referred to as the Act of* 1882), *it is provided that capital money arising under that Act may be applied in payment for any improvement by that Act authorised* (*a*) :

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Amendment of s. 21 of the Settled Land Act, 1882.

1. Where any improvement of a kind authorised by the Act of 1882 (*b*), has been or may be made either before or after the passing of this Act, and a rentcharge, whether temporary or perpetual, has been or may be created in pursuance of any Act of Parliament, with the object of paying off any moneys advanced for the purpose of defraying the expenses of such improvement, any capital money

(*a*) The preamble has been repealed by the Statute Law Revision Act, 1908.

(*b*) See p. 857, *supra*, and *Re Newton's S. E.*, W. N. 1889, p. 201; W. N. 1890, p. 24. This Act was passed in consequence of the decision in *Re Knatchbull's S. E.*, 27 Ch. D. 349, that terminable improvement rentcharges created under the Improvement of Land Act of 1864 were not incumbrances within the meaning of sect. 21, sub-sect. (ii.), of the Act of 1882. Capital moneys may now be employed either in payment of the instalments of such rentcharges as they fall due, including interest as well as principal, or in redeeming the rentcharges, in which case the trustees may pay a reasonable and proper sum by way of bonus to compensate the owner of the rentcharge for loss of interest: *Re Lord Egmont's S. E.*, 45 Ch. D. 395. But the Act does not authorise the trustees to recoup the tenant for life out of capital moneys, the instalments of such rentcharges actually paid by him before the passing of the Act: *Re Howard's S. E.*, [1892] 2 Ch. 233. As to such payments by the tenant for life since the Act, see *Re Dalison's S. E.*, [1892] 3 Ch. 522; *Re Marquis of Bristol's S. E.*, [1893] 3 Ch. 161. See also, as to this and the following section, *Ex parte Vicar of Castle Bytham*, [1895] 1 Ch. 348; *Re Earl Strafford and Maples*, [1896] 1 Ch. 235; and *Re Verney's S. E.*, [1898] 1 Ch. 508.

expended in redeeming such rentcharge, or otherwise providing for the payment thereof, shall be deemed to be applied in payment for an improvement authorised by the Act of 1882. 50 & 51 Vict. c. 30.

2. Any improvement in payment for which capital money is applied or deemed to be applied under the provisions of the preceding section shall be deemed to be an improvement within the meaning of section twenty-eight of the Act of 1882, and the provisions of such last-mentioned section shall, so far as applicable, be deemed to apply to such improvement. Sect. 28 of Settled Land Act, 1882, to apply to improvements within preceding section.

3. This Act shall be construed as one with the Settled Land Act, 1882, and the Settled Land Act, 1884, and may be cited together with those Acts as the Settled Land Acts, 1882 to 1887, and separately as the Settled Land Acts (Amendment) Act, 1887. Short title.

APPENDIX X.

52 & 53 Vict. c. 36.

52 & 53 VICT. Cap. 36.

AN ACT TO AMEND THE SETTLED LAND ACT, 1882.

[12*th August*, 1889.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Construction and short title.

1. This Act shall be construed as one with the Settled Land Acts, 1882 to 1887, and may be cited together with those Acts as the Settled Land Acts, 1882 to 1889, and separately as the Settled Land Act, 1889.

Option of purchase in building lease. 45 & 46 Vict. c. 38.

2. Any building lease, and any agreement for granting building leases, under the Settled Land Act, 1882, may contain an option, to be exercised at any time within an agreed number of years not exceeding ten, for the lessee to purchase the land leased at a price fixed at the time of the making of the lease or agreement for the lease, such price to be the best which having regard to the rent reserved can reasonably be obtained, and to be either a fixed sum of money or such a sum of money as shall be equal to a stated number of years' purchase of the highest rent reserved by the lease or agreement.

Price to be capital money.

3. Such price when received shall for all purposes be capital money arising under the Settled Land Act, 1882.

APPENDIX XI.

53 & 54 VICT. CAP. 69.

53 & 54 VICT. c. 69.

AN ACT TO AMEND THE SETTLED LAND ACTS, 1882 TO 1889.

[18*th August*, 1890.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short title.

1. This Act may be cited as the Settled Land Act, 1890.

Acts to be construed together.

2. The Settled Land Acts, 1882 to 1889, and this Act are to be read and construed together as one Act, *and may be cited as the Settled Land Acts*, 1882 *to* 1890 (*a*).

Interpretation.

3. Expressions used in this Act are to have the same meanings as those attached by the Settled Land Acts, 1882 to 1889, to similar expressions used therein.

Definitions.

Instrument in consideration of marriage, &c., to be part of the settlement.

4.—(1.) Every instrument whereby a tenant for life, in consideration of marriage or as part or by way of any family arrangement, not being a security for payment of money advanced, makes an assignment of or creates a charge upon his estate or interest under the settlement is to be deemed one of the instruments creating the settlement, and not an instrument vesting in any person any right as assignee for value within the meaning or operation of section fifty of the Act of 1882.

45 & 46 Vict. c. 38.

(2.) This section is to apply and have effect with respect to every disposition before as well as after the passing of this Act, unless inconsistent with the nature or terms of the disposition (*b*).

(*a*) These words have been repealed by the Statute Law Revision Act, 1908.

(*b*) See S. L. Act, 1882, s. 2, *supra*, p. 835, and s. 50, *supra*, p. 873. The section is confined to the purpose of excluding the operation of sect. 50

53 & 54 Vict. c. 69.

Exchanges.

Creation of easements on exchange or partition.

5. On an exchange or partition any easement, right, or privilege of any kind may be reserved or may be granted over or in relation to the settled land or any part thereof, or other land or an easement, right, or privilege of any kind may be given or taken in exchange or on partition for land or for any other easement, right, or privilege of any kind (*a*).

Completion of Contracts.

Power to complete predecessor's contract.

6. A tenant for life may make any conveyance which is necessary or proper for giving effect to a contract entered into by a predecessor in title, and which if made by such predecessor would have been valid as against his successors in title (*b*).

Leases.

Provision as to leases for 21 years.

7. A lease for a term not exceeding twenty-one years at the best rent that can be reasonably obtained without fine, and whereby the lessee is not exempted from punishment for waste (*c*), may be made by a tenant for life—

45 & 46 Vict. c. 38.

(i.) Without any notice of an intention to make the same having been given under section forty-five of the Act of 1882; and

(ii.) Notwithstanding that there are no trustees of the settlement for the purposes of the Settled Land Acts, 1882 to 1890; and

of the Act of 1882, as regards the limited class of instruments mentioned: it does not make an instrument of that class one of the instruments creating the settlement for all the purposes of the Act. *E.g.*, on a sale by a tenant for life, who has made an assignment in consideration of marriage, or by way of family arrangement, it is not necessary that there should be trustees of the subsequent assignment as well as of the original settlement; the two instruments are not for this purpose a "compound settlement" in the proper sense of that term. See *Re Keck & Hart's Contract*, [1898] 1 Ch. 617; and *Du Cane & Nettlefold's Contract*, [1898] 2 Ch. 96, where the earlier cases of *Re Tibbits' S. E.*, [1897] 2 Ch. 149, and *Re Meade's S. E.*, [1897] 1 I. R. 121, which had caused considerable inconvenience in practice, were discussed and explained.

(*a*) The latter part of the section, beginning with the words "or an easement," is an independent clause, and authorizes an exchange of easements apart from an exchange or partition of land: *Re Bracken's Settlement*, [1903] 1 Ch. 265. As to an exchange of an easement enjoyed with the settled land for one existing over it, see *Re Brotherton*, [1907] W. N. 230; [1908] W. N. 56.

(*b*) It has been laid down that this section does not apply to leases: *Re Kemeys-Tynte*, [1892] 2 Ch. 211. See sect. 12, sub-sect. 1, of the S. L. Act, 1882, *supra*, p. 846.

(*c*) See *Davies* v. *Davies*, 38 Ch. D. 499.

(iii.) By any writing under hand only containing an agreement instead of a covenant by the lessee for payment of rent in cases where the term does not extend beyond three years from the date of the writing. 53 & 54 Vict. c. 69.

8. In a mining lease— Provision as to mining leases.

(i.) The rent may be made to vary according to the price of the minerals or substances gotten, or any of them:

(ii.) Such price may be the saleable value, or the price or value appearing in any trade or market or other price list or return from time to time, or may be the marketable value as ascertained in any manner prescribed by the lease (including a reference to arbitration), or may be an average of any such prices or values taken during a specified period (*a*).

9. Where, on a grant for building purposes by a tenant for life, the land is expressed to be conveyed in fee simple with or subject to a reservation thereout of a perpetual rent or rentcharge, the reservation shall operate to create a rentcharge in fee simple issuing out of the land conveyed, and having incidental thereto all powers and remedies for recovery thereof conferred by section forty-four of the Conveyancing and Law of Property Act, 1881, and the rentcharge so created shall go and remain to the uses on the trusts and subject to the powers and provisions which, immediately before the conveyance, were subsisting with respect to the land out of which it is reserved. Power to reserve a rentcharge on a grant in fee simple. 44 & 45 Vict. c. 41.

Mansion and Park.

10.—(1.) *From and after the passing of this Act section fifteen of the Act of* 1882, *relating to the sale or leasing of the principal mansion house, shall be and the same is hereby repealed.* Restriction on sale of mansion (*b*).

(2.) Notwithstanding anything contained in the Act of 1882, the principal mansion house (if any) on any settled land, and the pleasure grounds and park and lands (if any) usually occupied therewith, shall not be sold, exchanged, or leased by the tenant for life without the consent of the trustees of the settlement or an order of the Court (*c*).

(3.) Where a house is usually occupied as a farmhouse, or where

(*a*) See S. L. Act, 1882, s. 9 (*supra*, p. 844).

(*b*) This sub-section has been repealed by the Statute Law Revision Act, 1908.

(*c*) The section applies to a park in the ordinary sense, and prevents the lease of an easement over the mansion house, &c., without the requisite consent or order. See *Pease* v. *Courtney*, [1904] 2 Ch. 503.

53 & 54 Vict. c. 69.

the site of any house and the pleasure grounds and park and lands (if any) usually occupied therewith, do not together exceed twenty-five acres in extent, the house is not to be deemed a principal mansion house within the meaning of this section (*a*).

The Raising of Money.

Power to raise money by mortgage (*b*).

11. (1.) Where money is required for the purpose of discharging an incumbrance on the settled land or part thereof, the tenant for life may raise the money so required, and also the amount properly required for payment of the costs of the transaction on mortgage of the settled land, or of any part thereof, by conveyance of the fee simple or other estate or interest the subject of the settlement, or by creation of a term of years in the settled land, or any part thereof, or otherwise, and the money so raised shall be capital money for that purpose, and may be paid or applied accordingly.

(2.) Incumbrance in this section does not include any annual sum payable only during a life or lives or during a term of years absolute or determinable.

Dealings as between Tenant for Life and the Estate.

Provision enabling dealings with tenant for life.

12. Where a sale of settled land is to be made to the tenant for life, or a purchase is to be made from him of land to be made subject to the limitations of the settlement, or an exchange is to be made with him of settled land for other land, or a partition is to be made with him of land an undivided share whereof is subject to the limitations of the settlement, the trustees of the settlement shall stand in the place of and represent the tenant for life, and shall, in addition to their powers as trustees, have all the powers of the tenant for life in reference to negotiating and completing the transaction (*c*).

(*a*) See the note to the repealed section of the S. L. Act, 1882 (*supra*, p. 847).

(*b*) By virtue of this section read in conjunction with sect. 2 (1) of the S. L. Act, 1882 (App. VII.), where two estates are settled in identically the same way, whether by one and the same instrument or by different instruments, an incumbrance affecting one of the estates may be paid off by means of a mortgage upon the other, or upon both of the estates: *Re Lord Monson's S. E.*, [1898] 1 Ch. 427; *Re Coull's S. E.*, [1905] 1 Ch. 712. As to the section generally, see *Re Smith's S. E.*, [1901] 1 Ch. 689; and also *Re Clifford*, [1902] 1 Ch. 87, where the meaning of the word "required" is considered. Under the Finance (1909-10) Act, 1910, a tenant for life is empowered by deed to charge the settled land with the amount of increment value duty or reversion duty paid or payable by him together with incidental expenditure: see sect. 39.

(*c*) Note that a *lease* of settled land is not mentioned in the section;

Application of Capital Money.

53 & 54 VICT. c. 69.

Application of capital money.

13. Improvements authorised by the Act of 1882 shall include the following; namely,

(i.) Bridges;

(ii.) Making any additions to or alterations in buildings reasonably necessary or proper to enable the same to be let;

(iii.) Erection of buildings in substitution for buildings within an urban sanitary district taken by a local or other public authority, or for buildings taken under compulsory powers, but so that no more money be expended than the amount received for the buildings taken and the site thereof;

(iv.) The rebuilding of the principal mansion house on the settled land: Provided that the sum to be applied under this sub-section shall not exceed one-half of the annual rental of the settled land (*a*).

nor can such a lease be granted by the tenant for life to himself or to himself and others. See *Dowager Duchess of Sutherland* v. *Duke of Sutherland*, [1893] 3 Ch. 169; *Boyce* v. *Edbrooke*, [1903] 1 Ch. 836.

(*a*) See S. L. Act, 1882, s. 25 (*supra*, p. 857). As to what are additions and alterations within sub-sect. (ii.), see *Re De Teissier's S. E.*, [1893] 1 Ch. 153; *Re Lord Gerard's S. E.*, [1893] 3 Ch. 252; *Re Gaskell's S. E.*, [1894] 1 Ch. 485; *Stanford* v. *Roberts*, [1901] 1 Ch. 440; *Re Blagrave's S. E.*, [1903] 1 Ch. 563, where it was laid down by the Court of Appeal that to come within sub-sect. (ii.) an addition must be of a structural character, and the cost of an electric lighting installation was not allowed out of capital; *Re Leveson-Gower's S. E.*, [1905] 2 Ch. 95, where a new building erected in place of an old one was excluded from the sub-section; and *Re Gurney's Marriage Settlement*, [1907] 2 Ch. 496, where the cost of structural alterations to a public-house required as a condition of a renewal of the licence was allowed. See also *Re Tucker's S. E.*, [1895] 2 Ch. 468, where the cost of alterations and additions, which were rather in the nature of repairs than of permanent improvements, was not allowed; and as to repairs generally, see *Re Willis*, [1902] 1 Ch. 15. There must be a present intention to let, though not necessarily an immediate prospect of letting, before any application of capital money can be made under this sub-section: *Re De Teissier's S. E.*, *ubi sup.*; *Re Lord Gerard's S. E.*, *ubi sup.*, at p. 260; *Stanford* v. *Roberts*, *ubi sup.*, and *Re Calverley's S. E.*, [1904] 1 Ch. 150. As to what is a "rebuilding" within sub-sect. (iv.), see the last-cited cases and *Re Earl of Dunraven's S. E.*, [1907] 2 Ch. 417. Structural alterations and repairs, however extensive, do not amount to such a "rebuilding." "Annual rental" in the proviso to sub-sect. (iv.) means the total income of all the settled property, not only rent from land, but also income derived from capital money invested: *Re De Teissier's S. E.*, *ubi sup.*; and *semble*, "the settled land" in the same proviso refers to the whole land subject to the settlement, and not to the particular estate on which the mansion house is situate: *Re Lord Gerard's S. E.*, *ubi sup.*

53 & 54 Vict. c. 69.

Capital money in Court may be paid out to trustees (*a*).

14. All or any part of any capital money paid into Court may, if the Court thinks fit, be at any time paid out to the trustees of the settlement for the purposes of the Settled Land Acts, 1882 to 1890.

Court may order payment for improvements executed.

15. The Court may, in any case where it appears proper, make an order directing or authorising capital money to be applied in or towards payment for any improvement authorised by the Settled Land Acts, 1882 to 1890, notwithstanding that a scheme was not, before the execution of the improvement, submitted for approval, as required by the Act of 1882, to the trustees of the settlement, or to the Court (*b*).

Trustees.

Trustees for the purposes of the Act.

16. Where there are for the time being no trustees of the settlement within the meaning and for the purposes of the Act of 1882, then the following persons shall, for the purposes of the Settled Land Acts, 1882 to 1890, be trustees of the settlement; namely,

(i.) The persons (if any) who are for the time being under the settlement trustees, with power of or upon trust for sale of any other land comprised (*c*) in the settlement and subject to the same limitations as the land to be sold, or with power of consent to or approval of the exercise of such a power of sale, or, if there be no such persons, then

(ii.) The persons (if any) who are for the time being under the settlement trustees, with future power of sale, or under a future trust for sale of the land to be sold, or with power of consent to or approval of the exercise of such a future power of sale, and whether the power or trust takes effect in all events or not (*d*).

(*a*) See *Re Torry Hill Estate*, [1909] 1 Ch. 468.

(*b*) See S. L. Act, 1882, s. 26 (*supra*, p. 859). As regards improvements executed without a scheme since the commencement of the Act of 1882, this section is retrospective; but it does not (except possibly in a very special case) authorise the application of capital money in payment for improvements executed before that time: *Re Ormrod's S. E.* [1892] 2 Ch. 318. And see *Re Dalison's S. E.*, [1892] 3 Ch. 522; *Re Marquis of Bristol's S. E.*, [1893] 3 Ch. 161. For examples of the exercise of the discretionary jurisdiction under the section, see *Re Tucker's S. E.*, [1895] 2 Ch. 468; *Re Lisburne's S. E.*, W. N. 1901, p. 91; and *Re Wormald's S. E.*, [1908] W. N. 214, where it was considered that the section applies in a case where no scheme could under the circumstances have been submitted; and cf. *Re Partington*, [1902] 1 Ch. 711.

(*c*) *I.e.*, "for the time being comprised." See *Re Moore*, [1906] 1 Ch. 789.

(*d*) See S. L. Act, 1882, s. 2 (8), *supra*, p. 838. For the purposes of

53 & 54 Vict. c. 69.

Application of provisions of 44 & 45 Vict. c. 41, as to appointment of trustees.

[17.—(1.) *All the powers and provisions contained in the Conveyancing and Law of Property Act*, 1881, *with reference to the appointment of new trustees, and the discharge and retirement of trustees, are to apply to and include trustees for the purposes of the Settled Land Acts*, 1882 *to* 1890, *whether appointed by the Court or by the settlement or under provisions contained in the settlement.*

(2.) *This section applies and is to have effect with respect to an appointment or a discharge and retirement of trustees taking place before as well as after the passing of this Act.*

(3.) *This section is not to render invalid or prejudice any appointment or any discharge and retirement of trustees effected before the passing of this Act otherwise than under the provisions of the Conveyancing and Law of Property Act*, 1881 (*a*).]

Extension of meaning of "working classes" in 48 & 49 Vict. c. 72.

18. The provisions of section eleven of the Housing of the Working Classes Act, 1885, and of any enactment which may be substituted therefor, shall have effect as if the expression "working classes" included all classes of persons who earn their livelihood by wages or salaries: Provided that this section shall apply only to buildings of a rateable value not exceeding one hundred pounds per annum (*b*).

sub-sect. (ii.) it is immaterial that the trust for or power of sale can never be exercised by the present trustees, *e.g.*, where it only arises on the death of a tenant for life who is one of the trustees. *Re Jackson's S. E.*, [1902] 1 Ch. 258; see also *Re Davies & Kent's Contract*, [1910] 2 Ch. 35, where a future trust for sale was impugned on the ground of perpetuity, and the trustees were also the tenants for life.

(*a*) This section has been repealed and replaced by sect. 47 of the Trustee Act, 1893 (App. XVI., *infra*). The repealed section was enacted to meet the case of *Re Wilcock*, 34 Ch. D. 508, in which it was doubted whether sect. 31 of the Conveyancing and Law of Property Act, 1881 (now repealed and replaced by sect. 10 of the Trustee Act, 1893), applied to trustees appointed for purposes of the Settled Land Acts.

(*b*) The section referred to has been repealed by the Housing of the Working Classes Act, 1890. By sect. 74 of this Act it is enacted:—

(1) The Settled Land Act, 1882, shall be amended as follows:—

(*a*) Any sale, exchange or lease of land in pursuance of the said Act, when made for the purpose of the erection on such land of dwellings for the working classes, may be made at such price, or for such consideration, or for such rent, as having regard to the said purpose, and to all the circumstances of the case, is the best that can be reasonably obtained, notwithstanding that a higher price, consideration, or rent might have been obtained if the land were sold, exchanged, or leased for another purpose.

(*b*) The improvements on which capital money may be expended, enumerated in section twenty-five of the said Act, and referred to in section thirty of the said Act, shall, in addition to

53 & 54 Vict. c. 69.

Power to vacate registration of writ.

19. The registration of a writ or order affecting land may be vacated pursuant to an order of the High Court or any judge thereof.

cottages for labourers, farm servants, and artizans, whether employed on the settled land or not, include any dwellings available for the working classes, the building of which, in the opinion of the Court, is not injurious to the estate.

Sub-sect (*b*) is discussed in *Re Calverley's S. E.*, [1904] 1 Ch. 150.

APPENDIX XII.

45 & 46 VICT. CAP. 75.

45 & 46 VICT. c. 75.

AN ACT TO CONSOLIDATE AND AMEND THE ACTS RELATING TO THE PROPERTY OF MARRIED WOMEN.

[18*th August*, 1882.]

Whereas it is expedient to consolidate and amend the Act of the thirty-third and thirty-fourth Victoria, chapter ninety-three, intituled "The Married Women's Property Act, 1870," *and the Act of the thirty-seventh and thirty-eighth Victoria, chapter fifty, intituled "An Act to amend the Married Women's Property Act* (1870)" (*a*):

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Married woman to be capable of holding property and of contracting as a feme sole.

1.—(1.) A married woman shall, in accordance with the provisions of this Act, be capable of acquiring, holding, and disposing by will or otherwise, of any real or personal property as her separate property, in the same manner as if she were a feme sole, without the intervention of any trustee (*b*).

(*a*) The preamble has been repealed by the Statute Law Revision Act, 1898.

(*b*) This sub-section must be read in connection with sects. 2 and 5, and the M. W. P. Act, 1893 (App. XIII., *infra*), s. 3. It does not give any disposing power as to property not falling within those sections: *Re Cuno, Mansfield* v. *M.*, 43 Ch. D. 12. It applies in the case of a woman married before 1883, only to her property acquired after 1882: *ibid.*, and see *Re Harris's S. E.*, 28 Ch. D. 171; and it has been held that the power of disposition by will here given to a married woman extends only to property to which she is entitled during coverture, so that a will made by her during coverture is not effectual as to property which she does not acquire until after the coverture is determined: *Re Price, Stafford* v. *S.*, 28 Ch. D. 709; see also *Re Cuno, Mansfield* v. *M.*, 43 Ch. D. 12. But in *Re Bowen*, [1892] 2 Ch. 291, the will of a married woman made before the passing of the Act was held to pass separate property acquired by virtue of the Act. And now by virtue of sect. 3 of the Act of 1893, the will of a married woman speaks from her death, and does not need to be re-executed after the death of her husband. With respect to probate and the nature generally of the will of a married woman, see the Probate Rules of 1887 (W. N. 1887, April 23); and *Re Price*, 12 P. D. 137; *Re*

45 & 46 Vict. c. 75.

(2.) A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued, either in contract or in tort, or otherwise, in all respects as if she were a feme sole, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property, and not otherwise (*a*).

Lambert, 39 Ch. D. 626; *Smart* v. *Tranter*, 43 Ch. D. 587; *Re Smith*, 45 Ch. D. 632; *Re Atkinson*, [1898] 1 Ch. 637; [1899] 2 Ch. 1; and *In the Goods of Leman*, [1898] P. 215. See also *Re Taylor*, 36 W. R. 633, relating to the confirmation of the will of a married woman by a will made after the death of her husband; and *Re M'Myn*, 33 Ch. D. 575, as to the right of a husband as personal representative of his wife to pay her funeral expenses out of her estate. As to a married woman's appointment by will, see *Re Roper*, *Roper* v. *Doncaster*, 39 Ch. D. 482; *Re Ann*, [1894] 1 Ch. 549, overruled in *Re Fieldwick*, [1909] 1 Ch. 1; and as to the effect of this Act where an earlier Act, giving special powers of disposition, expressly excludes married women, see *Re Smith's Estate*, *Clements* v. *Ward*, 35 Ch. D. 589. A conveyance by a married woman who is a "bare trustee" within the Trustee Act, 1893, s. 16, can be made without acknowledgment by her or the concurrence of her husband, see *Re Docwra*, 29 Ch. D. 693. It was held by North, J., in *Re Harkness & Allsopp's Contract*, [1896] 2 Ch. 358, that a married woman who is a trustee for sale could not convey without such acknowledgment and concurrence; but see now the Married Women's Property Act, 1907 (App. XIV., *infra*), s. 1, and cf. *Re Howgate & Osborn's Contract*, [1902] 1 Ch. 451. As to the effect of the Act upon the provisions as to married women contained in the Fines and Recoveries Act, see *Re Drummond & Davie's Contract*, [1891] 1 Ch. 524, and the Married Women's Property Act, 1907 (App. XIV., *infra*), s. 3; and as to gifts since the Act of paraphernalia, *Tasker* v. *Tasker*, [1895] P. 1. As to a gift to husband and wife, and a third person, see *Re March*, *Mander* v. *Harris*, 27 Ch. D. 166; *Re Jupp*, *Jupp* v. *Buckwell*, 39 Ch. D. 148; *Re Dixon*, *Byram* v. *Tull*, 42 Ch. D. 306. And as to the effect of the Act upon property which had been conveyed to husband and wife before the Act, and of which therefore they were tenants by entireties, the marriage having been dissolved, and also upon property conveyed to them after the Act, and of which, but for the Act, they would have been tenants by entireties, see *Thornley* v. *T.*, [1893] 2 Ch. 229; *Dunbar* v. *Dunbar*, [1909] W. N. 203: and as to trust property, sect. 18, *infra*.

(*a*) The husband may still be sued in respect of his wife's torts: *Seroka* v. *Kattenburg*, 17 Q. B. D. 177; *Earle* v. *Kingscote*, [1900] 2 Ch. 585; *Cuenod* v. *Leslie*, [1909] 1 K. B. 881; but by virtue of this sub-section it is unnecessary to join the husband if satisfaction is sought out of the wife's separate estate alone: see *Earle* v. *Kingscote*. Under this sub-section a married woman may sue alone in respect of a tort committed before the Act came into operation: *Weldon* v. *Winslow*, 13 Q. B. D. 784; *Lowe* v. *Fox*, *ibid.* 667; or a trespass: *Weldon* v. *De Bathe*, 14 Q. B. D. 339. A married woman, suing alone under the Act, cannot be required to give security for costs: *Threlfall* v. *Wilson*, 8 P. D. 18; *Jacob* v. *Isaac*,

[(3.) *Every contract entered into by a married woman shall be deemed to be a contract entered into by her with respect to and to bind her separate property, unless the contrary be shown.* 45 & 46 Vict. c. 75.

30 Ch. D. 418; *secus*, if she sues by her next friend: *Re Thompson*, 38 Ch. D. 317. If she appeals without a next friend, and has no free separate property, she must give security for the costs of the appeal: *Whittaker* v. *Kershaw*, 45 Ch. D. 296. Costs have been ordered to be paid out of income of property subject to restraint on anticipation: *Re Andrews, Edwards* v. *Dewar*, 30 Ch. D. 159. See observations in *Re Glanvill*, 31 Ch. D. 532, 539 (a case not within the above Act). See also *Hyde* v. *Hyde*, 13 P. D. 166, where the marriage was before the Act; and *Galmoye* v. *Cowan*, 58 L. J. Ch. 769; *Cox* v. *Bennett*, [1891] 1 Ch. 617. And the Court has now under the Married Women's Property Act, 1893 (App. XIII., *infra*), s. 2, jurisdiction to order payment of costs out of property subject to a restraint on anticipation, and may enforce such payment by the appointment of a receiver and the sale of the property or otherwise as may be just. That her sole undertaking is sufficient on an application for an injunction, see *Re Prynne*, W. N. 1884, p. 144; 53 L. T. 45; *Pike* v. *Cave*, W. N. 1893, p. 91. See further as to this sub-section, *Butler* v. *Butler*, 14 Q. B. D. 831, 837; 16 Q. B. D. 374; *Whittaker* v. *Kershaw*, 45 Ch. D. 320, where a married woman was ordered to refund a legacy assigned to her by her husband. As to a married woman's joint contract, see *Hoare* v. *Niblett*, [1891] 1 Q. B. 781. She may contract with her husband: *Sweet* v. *Sweet*, [1898] 1 Q. B. 12.

As to the form of judgment against a married woman under this Act, see *Perks* v. *Mylrea*, W. N. 1884, p. 64; and the form given in *Scott* v. *Morley*, 20 Q. B. D. 120, from which it appears that property settled upon her with restraint on anticipation cannot (in cases under this Act) be reached unless it was property so settled by herself on marriage, in which case, by virtue of sect. 19 (*infra*), it remains liable to satisfy her antenuptial debts; but not her debts contracted during coverture, even though judgment be given after the coverture, and the separate use, therefore, has ceased: *Beckett* v. *Tasker*, 19 Q. B. D. 7; *Pelton Brothers* v. *Harrison*, [1891] 2 Q. B. 422. The M. W. P. Act, 1893 (App. XIII., *infra*), s. 1, may be thought not to have overruled the last-mentioned cases. See also *Re Hewett*, [1895] 1 Q. B. 328, where it was decided that the death of the husband does not enlarge a judgment against a married woman in the form in *Scott* v. *Morley* (*ubi supra*), so as to render her personally liable for the judgment debt; and *Softlaw* v. *Welch*, [1899] 2 Q. B. 419; *Brown* v. *Dimberley*, [1904] 1 K. B. 28. In *Hemingway* v. *Braithwaite*, 61 L. T. 224, it was held that where an infant was married in December, 1882, and a post-nuptial settlement was made on her (under the Infants' Settlement Act), with restraint on anticipation, the property so settled was not liable to satisfy a debt contracted after the marriage but before the settlement. See also *Re Dixon*, 35 Ch. D. 4. As to the operation of Statutes of Limitation on debts of a married woman, see *Re Hastings*, 35 Ch. D. 94; as to garnishee proceedings, *Holtby* v. *Hodgson*, 24 Q. B. D. 103; and as to discovery in aid of execution, *Countess of Aylesford* v. *G. W. Ry. Co.*, [1892] 2 Q. B. 626. Judgment against a married woman's separate estate not being a personal judgment, she cannot be committed under sect. 5 of the Debtors Act, 1869: *Scott* v. *Morley*, 20 Q. B. D. 120. She may, however, be attached for non-payment of a sum of trust money ordered to be paid by her into Court, such an order not creating a debt: *Re Turnbull*, [1900] 1 Ch 180. But the personal liability of a married woman at common law upon con-

45 & 46 Vict. c. 75.

(4.) *Every contract entered into by a married woman with respect to and to bind her separate property shall bind not only the separate property which she is possessed of or entitled to at the date of the contract, but also all separate property which she may thereafter acquire* (*a*).]

tracts made by her before marriage is not taken away by the M. W. P. Act, 1882: *Robinson, King & Co.* v. *Lynes*, [1894] 2 Q. B. 577. It should be noted that, in cases within the M. W. P. Act, 1870, separate property of a married woman is liable for her ante-nuptial debts although it be settled upon her without power of anticipation: *Axford* v. *Reid*, 22 Q. B. D. 548, following *Sanger* v. *Sanger*, L. R. 11 Eq. 470 (where the property was so settled by a will); see *Re Hedgely*, *Small* v. *Hedgely*, 34 Ch. D. 379. As to liability of a married woman for conveying to B. land which she had agreed to mortgage to A., see *Davies* v. *Stanford*, 61 L. T. 234. The question whether a lease can properly be granted to a married woman in exercise of the powers of the Settled Land Act, 1882 (App. VII., *supra*), in view of the qualified nature of a married woman's covenants, was raised, but not decided, in *Dowager Duchess of Sutherland* v. *Duke of S.*, [1893] 3 Ch. 169.

(*a*) These sub-sections have been repealed by the Married Women's Property Act, 1893 (App. XIII., *infra*), s. 4, and re-enacted with amendments in sect. 1 of that Act. A married woman may now contract, whether she has or has not at the time any separate property, and the contract binds all separate property which she has at the time of the contract or subsequently acquires, and is also enforceable against all property which she is subsequently possessed of while discovert; but any separate property which at the time of the contract or afterwards is subject to a restraint upon anticipation is not available to satisfy any liability or obligation arising out of the contract.

Under the repealed sub-sections (which apply to contracts made between 1st January, 1883, and the passing of the Married Women's Property Act, 1893), the following points have been decided:—a married woman is incapable of contracting at all unless she has at the time of the contract some free separate property of such value and amount as that she may reasonably be deemed to have contracted with respect to it: *Palliser* v. *Gurney*, 19 Q. B. D. 521; *Leak* v. *Driffield*, 24 Q. B. D. 101; *Harrison* v. *H.*, 13 P. D. 180; *Stogdon* v. *Lee*, [1891] 1 Q. B. 661; the onus of showing this is on the person suing on the contract (*Palliser* v. *Gurney*, *ubi supra*), and the statement of claim should contain an allegation to the effect above stated: *Tetley* v. *Griffith*, 57 L. J. 673; separate property having once become bound by the contract is not freed by ceasing to be "separate" on the death of the husband: *Pelton Bros.* v. *Harrison*, [1891] 2 Q. B. 426; on the other hand, separate property not bound by reason of its being subject to a restraint upon anticipation during the coverture does not become so by the husband's death: *Beckett* v. *Tasker*, 19 Q. B. D. 7; *Pelton Bros.* v. *Harrison*, *ubi supra*; except, however, in the case of a married woman entitled to separate estate subject to a restraint who has become bankrupt: *Re Wheeler's Settlement Trusts*, [1899] 2 Ch. 717; and cf. *Claydon* v. *Finch*, 15 Eq. 266; *Re Glanvill*, 31 Ch. D. 532; *Hyde* v. *Hyde*, 13 P. D. 166; *Draycott* v. *Harrison*, 17 Q. B. D. 147. The "separate property which she may thereafter acquire" in sub-sect. 4, must be property acquired during coverture (*Pelton Bros.* v. *Harrison*, *ubi supra*): which, however, may be a subsequent coverture: *Jay* v. *Robinson*, 25 Q. B. D. 467. It seems doubtful whether the decision in *Pelton Bros.* v. *Harrison* as to the effect of the removal of a restraint upon anticipation by reason of the death of the husband, is overruled by the Act of 1893, as to contracts entered into after the 5th December,

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(5.) Every married woman carrying on a trade separately from her husband, shall, in respect of her separate property, be subject to the bankruptcy laws in the same way as if she were a feme sole (*a*).

Property of a woman married after the Act to be held by her as a feme sole.

2. Every woman who marries after the commencement of this Act shall be entitled to have and to hold as her separate property, and to dispose of in manner aforesaid (*b*) all real and personal property which shall belong to her at the time of marriage, or shall be acquired by or devolve upon her after marriage, including any wages, earnings, money, and property, gained or acquired by her in any employment, trade, or occupation, in which she is engaged, or which she carries on separately from her husband, or by the exercise of any literary, artistic, or scientific skill.

1893 (see *Hill* v. *The Marchioness of Aylesbury*, "Times" newspaper, May 23, 1894; *Re Hewett*, [1895] 1 Q. B. 328). In *Hood Barrs* v. *Cathcart*, [1894] 2 Q. B. 559, it was laid down by the Court of Appeal that neither the Act of 1882 nor the Act of 1893 enabled a judgment against a married woman to be enforced against arrears of her separate estate accruing due afterwards, as to which she was restrained from anticipation, either by a receiver, sequestration, charging order, or any kind of process. It would appear that the reasoning in that case has been disapproved by the House of Lords in *Hood Barrs* v. *Heriot*, [1896] A. C. 174. But the question before the House related to arrears due at or before the date of the judgment; and in the subsequent case of *Whiteley* v. *Edwards*, [1896] 2 Q. B. 48; approved in *Bolitho & Co., Ltd.* v. *Gurney*, [1905] A. C. 98, the Court of Appeal considered that the actual decision in *Hood Barrs* v. *Cathcart* was not touched by *Hood Barrs* v. *Heriot*. See also *Re Sampson*, [1896] 1 Ch. 630.

(*a*) "Separate property," within this section, does not include a general power of appointment; and a trustee in bankruptcy cannot require a married woman to exercise such a power in his favour: *Ex parte Gilchrist, Re Armstrong*, 17 Q. B. D. 521; but her life estate under her marriage settlement (subject to any restraint on anticipation) passes to the trustee: *Ex parte Boyd, Re Armstrong*, 21 Q. B. D. 264; and on the death of her husband in her lifetime, becomes assets for her creditors: *Re Wheeler's Settlement Trusts*, [1899] 2 Ch. 717. A married woman is not subject to the bankruptcy law unless she carries on a trade separately from her husband: *Ex parte Coulson*, 20 Q. B. D. 249; *Re A Debtor*, [1898] 2 Q. B. 576. As to what is separate trading, see *Re Dearmer*, W. N. 1885, p. 212; 53 L. T. 905, following *Ashworth* v. *Outram*, 5 Ch. D. 923; *Lovell* v. *Newton*, 4 C. P. D. 7; *Re Helsby*, W. N. 1893, p. 189; and *Re Dagnall*, [1896] 2 Q. B. 407; *Re Ida Simon*, [1909] 1 K. B. 201 (where the wife's business was managed by the husband). By sect. 152 of the Bankruptcy Act, 1883, nothing in that Act is to affect the provisions of M. W. P. Act, 1882. A bankruptcy notice under sect. 4, sub-sect. 1 (9), of the Bankruptcy Act, 1883, cannot be issued against a married woman carrying on a trade separately from her husband, and against whom a creditor has recovered judgment in the form in *Scott* v. *Morley* (20 Q. B. D. 120): *Re Hannah Lynes*, [1893] 2 Q. B. 113.

(*b*) Accordingly she need not be examined as to her consent to an application under sect. 50 of the Settled Estates Act, 1877: *Riddell* v. *Errington*, 26 Ch. D. 220. *Secus*, if she was married before the commencement of the Act: *Re Harris' S. E.*, 28 Ch. D. 171.

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Loans by wife to husband.

3. Any money or other estate of the wife lent or entrusted by her to her husband for the purpose of any trade or business carried on by him or otherwise, shall be treated as assets of her husband's estate in case of his bankruptcy, under reservation of the wife's claim to a dividend as a creditor for the amount or value of such money or other estate after, but not before, all claims of the other creditors of the husband for valuable consideration in money or money's worth have been satisfied (*a*).

Execution of general power.

4. The execution of a general power by will by a married woman shall have the effect of making the property appointed liable for her debts and other liabilities (*b*) in the same manner as her separate estate is made liable under this Act.

Property acquired after the Act by a woman married before the Act to be held by her as a feme sole.

5. Every woman married before the commencement of this Act shall be entitled to have and to hold and to dispose of in manner aforesaid as her separate property all real and personal property, her title to which, whether vested or contingent, and whether in possession, reversion, or remainder, shall accrue after the commencement of this Act, including any wages, earnings, money, and property so gained or acquired by her as aforesaid (*c*).

(*a*) This section is not retrospective: *Ex parte Home*, 54 L. T. 301. If money be lent by the wife to a firm in which the husband is a partner, she is not postponed to the other joint creditors: *Ex parte Nottingham*, 19 Q. B. D. 88. Compare with this section the 5th section of Bovill's Act (28 & 29 Vict. c. 86), and the corresponding sections of the Partnership Act, 1890; and see *Re Genese*, 16 Q. B. D. 700; *Re Leng*, [1895] 1 Ch. 652; and *Re Cronmire*, [1901] 1 Q. B. 480, as to its operation and effect. The words "or otherwise" do not extend the section to money lent to the husband for private purposes: *Ex parte Tidswell*, 35 W. R. 69; 56 L. J. Q. B. 549, which was followed in *Mackintosh* v. *Pogose*, [1895] 1 Ch. 505, and approved in *Re Clark*, [1898] 2 Q. B. 330, notwithstanding an Irish case (*Alexander* v. *Barnhill*, 26 L. R. Ir. 511) to the contrary effect. And see, as to the right of retainer of a widow, administratrix of her late husband, *Re May*, 45 Ch. D. 499; *Re Ambler*, [1905] 1 Ch. 697.

As to loans by a husband to his wife, see *Butler* v. *Butler*, 14 Q. B. D. 831, on appeal, 16 Q. B. D. 374. As to gifts by wife to husband, *Re Curtis*, 52 L. T. 244; *Edwards* v. *Cheyne*, 13 App. Cas. 385; *Re Flamank*, 40 Ch. D. 461; *Re Blake*, 37 W. R. 441; *Hall* v. *Sheldrake*, 60 L. T. 292.

(*b*) See as to this section, *Re Roper*, 39 Ch. D. 482; and cf. *Re De Burgh Lawson*, 41 Ch. D. 568; *Re Ann*, [1894] 1 Ch. 549; *Re Parkin*, [1892] 3 Ch. 510; *Re Hughes*, [1898] 1 Ch. 529; *Re Fieldwick*, [1909] 1 Ch. 1 (overruling *Re Ann*).

(*c*) See as to when the title accrues, cases, *supra*, p. 58, note (*b*). The section applies to damages recovered by the verdict of a jury, though the husband was co-plaintiff in the action: *Beasley* v. *Roney*, [1891] 1 Q. B. 509. A mere *spes successionis* does not give a contingent title within the meaning of the section: *Re Parsons*, 45 Ch. D. 51; and cf. *Allcard* v. *Walker*, [1896] 2 Ch. 369. A husband is entitled to curtesy in his wife's undisposed-of real estate, notwithstanding this section, and sect. 1, sub-sect. 1: *Hope* v. *Hope*, [1892] 2 Ch. 336. The section does not enable a creditor to take the accrued income of property settled with restraint

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As to stock, &c., to which a married woman is entitled.

6. All deposits in any post office or other savings bank, or in any other bank, all annuities granted by the Commissioners for the Reduction of the National Debt or by any other person, and all sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Governor and Company of the Bank of England, or of any other bank, which at the commencement of this Act are standing in the sole name of a married woman, and all shares, stock, debentures, debenture stock, or other interests of or in any corporation, company, or public body, municipal, commercial, or otherwise, or of or in any industrial, provident, friendly, benefit, building, or loan society, which at the commencement of this Act are standing in her name, shall be deemed, unless and until the contrary be shown, to be the separate property of such married woman; and the fact that any such deposit, annuity, sum forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Governor and Company of the Bank of England or of any other bank, share, stock, debenture, debenture stock, or other interest as aforesaid, is standing in the sole name of a married woman, shall be sufficient *primâ facie* evidence that she is beneficially entitled

on anticipation: *Beckett* v. *Tasker*, 19 Q. B. D. 7; but see the notes, *supra*, on sect. 1, sub-sects. 3 and 4. As to a married woman's will raising a case for election, see *Re Harris*, [1909] 2 Ch. 206. It was formerly considered that the effect of sect. 19, *infra*, was to preserve the rights of persons taking under a marriage settlement as if the Act had not passed. Thus where a marriage settlement made in 1862 contained an agreement for the settlement of after-acquired property of the wife except interests settled to her separate use, it was held that a bequest made to her after the commencement of the Act, without any limitation to separate use, came within the agreement: *Re Stonor's Trusts*, 24 Ch. D. 195, followed in *Re Whitaker*, 34 Ch. D. 227. And so a covenant to settle, by the husband alone, was held to bind property which, but for sect. 19, the wife would take for her separate use under the Act: *Hancock* v. *Hancock*, 38 Ch. D. 78, overruling *Re Queade's Trusts*, 33 W. R. 816. In all these cases the settlement and the marriage were before the Act, and the wife's title accrued after the Act. In *Re Stonor's Trusts* and *Re Whitaker*, the covenant was entered into by the wife as well as the husband. The decision in *Hancock* v. *Hancock* was extended to cases of settlements after the Act: *Stevens* v. *Trevor-Garrick*, [1893] 2 Ch. 307, followed in *Buckland* v. *Buckland*, [1900] 2 Ch. 534. In *Re Queade's Trusts*, Chitty, J., pointed out some singular consequences which might result if sect. 19 were so construed as to give to a covenant to settle by the husband alone the same effect which it would have had before the Act. And by the Married Women's Property Act, 1907 (App. XIV., *infra*), s. 2 (1), it has been enacted that, notwithstanding sect. 19, a settlement or agreement for a settlement made after the 1st January, 1908, by a husband or intended husband, whether before or after marriage, respecting the property of any woman he may marry or have married shall not be valid unless executed by her if of full age or confirmed by her after attaining full age.

45 & 46 Vict. c. 75.

thereto for her separate use, so as to authorise and empower her to receive or transfer the same, and to receive the dividends, interest, and profits thereof without the concurrence of her husband, and to indemnify the Postmaster-General, the Commissioners for the Reduction of the National Debt, the Governor and Company of the Bank of England, the Governor and Company of the Bank of Ireland, and all directors, managers, and trustees of every such bank, corporation, company, public body, or society as aforesaid, in respect thereof.

As to stock, &c., to be transferred, &c., to a married woman.

7. All sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Bank of England or of any other bank, and all such deposits and annuities respectively as are mentioned in the last preceding section, and all shares, stock, debentures, debenture stock, and other interests of or in any such corporation, company, public body, or society as aforesaid, which after the commencement of this Act shall be allotted to or placed, registered, or transferred in or into or made to stand in the sole name of any married woman shall be deemed, unless and until the contrary be shown, to be her separate property, in respect of which so far as any liability may be incident thereto her separate estate shall alone be liable, whether the same shall be so expressed in the document whereby her title to the same is created or certified, or in the books or register wherein her title is entered or recorded, or not.

Provided always, that nothing in this Act shall require or authorise any corporation or joint stock company to admit any married woman to be a holder of any shares or stock therein to which any liability may be incident, contrary to the provisions of any Act of Parliament, charter, byelaw, articles of association, or deed of settlement, regulating such corporation or company (*a*).

Investments in joint names of married woman and others.

8. All the provisions hereinbefore contained as to deposits in any post office or other savings bank, or in any other bank, annuities granted by the Commissioners for the Reduction of the National Debt or by any other person, sums forming part of the public stocks or funds, or of any other stocks or funds transferable in the books of the Bank of England or of any other bank, shares, stock, debentures, debenture stock, or other interests of or in any such corporation, company, public body, or society as aforesaid respectively, which at the commencement of this Act shall be standing in the sole name of a married woman, or which, after that time, shall

(*a*) As to registering a married woman as shareholder, see *Reg.* v. *Carnatic Ry. Co.*, L. R. 8 Q. B. 299 (a case under the M. W. P. Act, 1870).

be allotted to, or placed, registered, or transferred to or into, or made to stand in, the sole name of a married woman, shall respectively extend and apply, so far as relates to the estate, right, title, or interest of the married woman, to any of the particulars aforesaid which, at the commencement of this Act, or at any time afterwards, shall be standing in or shall be allotted to, placed, registered, or transferred to or into or made to stand in, the name of any married woman, jointly with any persons or person other than her husband. 45 & 46 Vict. c. 75.

As to stock, &c., standing in the joint names of a married woman and others.

9. It shall not be necessary for the husband of any married woman, in respect of her interest, to join in the transfer of any such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds, or of any other stocks or funds transferable as aforesaid, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society as aforesaid, which is now or shall at any time hereafter be standing in the sole name of any married woman, or in the joint names of such married woman and any other person or persons not being her husband.

Fraudulent investments with money of husband.

10. If any investment in any such deposit or annuity as aforesaid, or in any of the public stocks or funds, or in any other stocks or funds transferable as aforesaid, or in any share, stock, debenture, or debenture stock, of any corporation, company, or public body, municipal, commercial, or otherwise, or in any share, debenture, benefit, right, or claim whatsoever in, to, or upon the funds of any industrial, provident, friendly, benefit, building, or loan society, shall have been made by a married woman by means of moneys of her husband, without his consent, the Court may, upon an application under section seventeen of this Act, order such investment, and the dividends thereof, or any part thereof, to be transferred and paid respectively to the husband; and nothing in this Act contained shall give validity as against creditors of the husband to any gift, by a husband to his wife, of any property, which, after such gift, shall continue to be in the order and disposition or reputed ownership of the husband, or to any deposit or other investment of moneys of the husband made by or in the name of his wife in fraud of his creditors; but any moneys so deposited or invested may be followed as if this Act had not passed.

Moneys payable under policy of assurance not to form part of estate of the insured.

11. A married woman may by virtue of the power of making contracts hereinbefore contained effect a policy upon her own life or the life of her husband for her separate use; and the same and all benefit thereof shall enure accordingly.

A policy of assurance effected by any man on his own life, and expressed to be for the benefit of his wife, or of his children, or of

45 & 46 Vict. c. 75.

his wife and children (*a*), or any of them, or by any woman on her own life, and expressed to be for the benefit of her husband or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured (*b*), or be subject to his or her debts: Provided that if it shall be proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive, out of the moneys payable under the policy, a sum equal to the premiums so paid. The insured may by the policy, or by any memorandum under his or her hand, appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof, and for the investment of the moneys payable under any such policy. In default of any such appointment of a trustee, such policy, immediately on its being effected, shall vest in the insured and his or her legal personal representatives, in trust for the purposes aforesaid. If, at the time of the death of the insured, or at any time afterwards, there shall be no trustee, or it shall be expedient to appoint a new trustee or new trustees, a trustee or trustees or a new trustee or new trustees may be appointed by any Court having jurisdiction under the provisions of the Trustee Act, 1850, or the Acts amending and extending the same (*c*). The receipt of a trustee or trustees duly appointed, or, in default of any such appointment, or in default of notice to the insurance office, the receipt of the legal personal representative of the insured shall be a discharge to the office for the sum secured by the policy, or for the value thereof, in whole or in part.

13 & 14 Vict. c. 60.

(*a*) Where a policy, taken out under sect. 13 of the M. W. P. Act, 1870, was expressed to be for the benefit of the wife and children, it was held that the wife and children took the moneys payable under the policy as joint tenants: *Re Davies' Policy Trusts*, [1892] 1 Ch. 90. In both Acts the word "wife" extends to an after-taken wife: *Re Parker's Policies*, [1906] 1 Ch. 526. See also *Griffiths* v. *Fleming*, [1909] 1 K. B. 805. As to petitions under the Act, see *Re Kuyper's Policy Trusts*, [1899] 1 Ch. 38.

(*b*) Where a wife was convicted of murdering her husband, it was held that there was a resulting trust in favour of the husband's estate of the amount of a policy effected by him for the benefit of his wife: *Cleaver and others* v. *Mutual Reserve Fund Life Association*, [1892] 1 Q. B. 147.

(*c*) See *Seyton* v. *Satterthwaite*, 34 Ch. D. 511; *Schultze* v. *Schultze*, 56 L. J. Ch. 356; and *Re Turnbull*, [1897] 2 Ch. 415, where the policy was effected under sect. 10 of the Act of 1870, but the husband died after 1882; and see *Re Kuyper*, *ubi sup.* See now (as to the appointment of new trustees) the Trustee Act, 1893.

45 & 46 Vict. c. 75.

Remedies of married woman for protection and security of separate property.

12. Every woman, whether married before or after this Act, shall have in her own name against all persons whomsoever, including her husband (*a*), the same civil remedies, and also (subject as regards her husband, to the proviso hereinafter contained) the same remedies and redress by way of criminal proceedings, for the protection and security of her own separate property, as if such property belonged to her as a feme sole, but except as aforesaid, no husband or wife shall be entitled to sue the other for a tort. In any indictment or other proceeding under this section it shall be sufficient to allege such property to be her property; and in any proceeding under this section a husband or wife shall be competent to give evidence against each other, any statute or rule of law to the contrary notwithstanding (*b*): Provided always, that no criminal proceeding shall be taken by any wife against her husband by virtue of this Act while they are living together, as to or concerning any property claimed by her, nor while they are living apart, as to or concerning any act done by the husband while they were living together, concerning property claimed by the wife, unless such property shall have been wrongfully taken by the husband when leaving or deserting, or about to leave or desert, his wife.

Wife's antenuptial debts and liabilities.

13. A woman after her marriage shall continue to be liable in respect and to the extent of her separate property for all debts contracted, and all contracts entered into or wrongs committed by her before her marriage (*c*), including any sums for which she may be liable as a contributory, either before or after she has been placed on the list of contributories, under and by virtue of the Acts

(*a*) *Larner* v. *Larner*, [1905] 2 K. B. 539, where the wife's action in detinue succeeded. As to his rights against her, see *Butler* v. *Butler*, 14 Q. B. D. 831; 16 Q. B. D. 374. But she cannot sue her husband otherwise than for the protection of her separate property, *e.g.*, for libel: *Reg.* v. *Lord Mayor of London*, 15 Q. B. D. 772. An inquiry as to damages on an undertaking given by a married woman plaintiff in an action against her husband, was ordered in *Hunt* v. *Hunt*, W. N. 1884, p. 243; 54 L. J. Ch. 289.

(*b*) By the Married Women's Property Act, 1884 (47 Vict. c. 14), it is provided (sect. 1) that in any such criminal proceeding against a husband or a wife as is authorised by the present Act, the husband and wife respectively shall be competent and admissible witnesses, and, except when defendant, compellable to give evidence.

(*c*) The words "before her marriage" in this section, and "before marriage" in sect. 19, do not mean "before ever having been married," but "before the marriage existing at the time her liability is under consideration;" and the word "debts" as used in both sections, includes both common-law debts contracted by a woman whilst a feme sole, and debts contracted under the Act, in respect of her separate property, during a previous marriage: *Jay* v. *Robinson*, 25 Q. B. D. 467.

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relating to joint-stock companies; and she may be sued for any such debt and for any liability in damages or otherwise under any such contract, or in respect of any such wrong; and all sums recovered against her in respect thereof, or for any costs relating thereto, shall be payable out of her separate property; and, as between her and her husband, unless there be any contract between them to the contrary, her separate property shall be deemed to be primarily liable for all such debts, contracts, or wrongs, and for all damages or costs recovered in respect thereof (*a*). Provided always, that nothing in this Act shall operate to increase or diminish the liability of any woman married before the commencement of this Act for any such debt, contract, or wrong as aforesaid, except as to any separate property to which she may become entitled by virtue of this Act, and to which she would not have been entitled for her separate use under the Acts hereby repealed or otherwise, if this Act had not passed.

Husband to be liable for his wife's debts contracted before marriage to a certain extent.

14. A husband shall be liable for the debts of his wife contracted, and for all contracts entered into and wrongs committed by her, before marriage, including any liabilities to which she may be so subject under the Acts relating to joint-stock companies as aforesaid, to the extent of all property whatsoever belonging to his wife which he shall have acquired or become entitled to, from or through his wife, after deducting therefrom any payments made by him, and any sums for which judgment may have been *bonâ fide* recovered against him in any proceeding at law, in respect of any such debts, contracts, or wrongs for or in respect of which his wife was liable before her marriage as aforesaid; but he shall not be liable for the same any further or otherwise; and any court in which a husband shall be sued for any such debt shall have power to direct any inquiry or proceedings which it may think proper for the purpose of ascertaining the nature, amount, or value of such property: Provided always, that nothing in this Act contained shall operate to increase or diminish the liability of any husband married before the commencement of this Act for or in respect of any such debt or other liability of his wife as aforesaid (*b*).

(*a*) See *Butler* v. *Butler*, 14 Q. B. D. 831; 16 Q. B. D. 374; and as to the effect of sects. 13, 14, 15, see *Beck* v. *Pierce*, 23 Q. B. D. 316. The husband, if sued, is entitled to indemnity: *ib.* p. 321. Judgment recovered against the wife is no defence to an action against him, but statutes of limitation run in his favour in respect of the wife's ante-nuptial debt as from the time when the debt accrued due against her: *S. C.*

(*b*) The husband can be sued alone under this section: *Beck* v. *Pierce*, 23 Q. B. D. 316, 321; see sect. 15. Costs of the marriage settlement of an infant ward of Court (including husband's costs) were ordered to be paid out of the corpus of the settled funds in *De Stacpoole* v. *De Stacpoole*, 37 Ch. D. 139.

45 & 46 Vict. c. 75.

Suits for ante-nuptial liabilities.

15. A husband and wife may be jointly sued in respect of any such debt or other liability (whether by contract or for any wrong) contracted or incurred by the wife before marriage as aforesaid, if the plaintiff in the action shall seek to establish his claim, either wholly or in part, against both of them; and if in any such action, or in any action brought in respect of any such debt or liability against the husband alone (*a*), it is not found that the husband is liable in respect of any property of the wife so acquired by him or to which he shall have become so entitled as aforesaid, he shall have judgment for his costs of defence, whatever may be the result of the action against the wife if jointly sued with him; and in any such action against husband and wife jointly, if it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband personally and against the wife as to her separate property; and as to the residue, if any, of such debt and damages, the judgment shall be a separate judgment against the wife as to her separate property only.

Act of wife liable to criminal proceedings.

16. A wife doing any act with respect to any property of her husband, which, if done by the husband with respect to property of the wife, would make the husband liable to criminal proceedings by the wife under this Act, shall in like manner be liable to criminal proceedings by her husband (*b*).

Questions between husband and wife as to property to be decided in a summary way.

17. In any question between husband and wife as to the title to or possession of property, either party, or any such bank, corporation, company, public body, or society as aforesaid in whose books any stocks, funds, or shares of either party are standing, may apply by summons or otherwise in a summary way to any Judge in the High Court of Justice in England or in Ireland, according as such property is in England or Ireland, or (at the option of the applicant irrespectively of the value of the property in dispute) in England to the Judge of the county court of the district, or in Ireland to the chairman of the civil bill court of the division in which either party resides, and the Judge of the High Court of Justice (*c*) or of the county court, or the chairman of the civil bill court (as the case may be) may make such order with respect to the

(*a*) See last note, and *Earle* v. *Kingscote*, [1900] 1 Ch. 203; 2 Ch. 585.

(*b*) See *R.* v. *Brittleton*, 12 Q. B. D. 266, and sect. 12 and notes thereto, *supra*, p. 911.

(*c*) The Registrar has not jurisdiction to make an order under this section: *Wood* v. *Wood and White*, 14 P. D. 157. An inquiry was directed in *Phillips* v. *Phillips*, 13 P. D. 220. See also *Larner* v. *Larner*, [1905] 2 K. B. 539.

45 & 46 Vict. c. 75.

property in dispute, and as to the costs of and consequent on the application as he thinks fit, or may direct such application to stand over from time to time, and any inquiry touching the matters in question to be made in such manner as he shall think fit: Provided always, that any order of a Judge of the High Court of Justice to be made under the provisions of this section shall be subject to appeal in the same way as an order made by the same judge in a suit pending or on an equitable plaint in the said court would be; and any order of a county or civil bill court under the provisions of this section shall be subject to appeal in the same way as any other order made by the same court would be, and all proceedings in a county court or civil bill court under this section in which, by reason of the value of the property in dispute, such court would not have had jurisdiction if this Act or the Married Women's Property Act, 1870, had not passed, may, at the option of the defendant or respondent to such proceedings, be removed as of right into the High Court of Justice in England or Ireland (as the case may be), by writ of *certiorari* or otherwise as may be prescribed by any rule of such High Court; but any order made or act done in the course of such proceedings prior to such removal shall be valid, unless order shall be made to the contrary by such High Court: Provided also, that the Judge of the High Court of Justice or of the county court, or the chairman of the civil bill court, if either party so require, may hear any such application in his private room: Provided also, that any such bank, corporation, company, public body, or society as aforesaid, shall, in the matter of any such application for the purposes of costs or otherwise, be treated as a stakeholder only.

Married woman as an executrix or trustee.

18. A married woman who is an executrix or administratrix alone or jointly with any other person or persons of the estate of any deceased person, or a trustee alone or jointly as aforesaid of property subject to any trust, may sue or be sued, and may transfer or join in transferring any such annuity or deposit as aforesaid, or any sum forming part of the public stocks or funds, or of any other stocks or funds transferable as aforesaid, or any share, stock, debenture, debenture stock, or other benefit, right, claim, or other interest of or in any such corporation, company, public body, or society in that character, without her husband, as if she were a feme sole (*a*).

Saving of existing

19. Nothing in this Act contained shall interfere with or affect (*b*)

(*a*) See p. 58, *supra*, note (*a*), and the M. W. P. Act, 1907 (App. XIV., *infra*), s. 1.

(*b*) *I.e.*, "invalidate" or "render inoperative": *Re Armstrong*, 21 Q. B. D. 264.

45 & 46 Vict. c. 75.

any settlement or agreement for a settlement made or to be made, whether before or after marriage, respecting the property of any married woman (*a*) or shall interfere with or render inoperative any restriction against anticipation at present attached or to be hereafter attached to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, will, or other instrument; but no restriction against anticipation contained in any settlement or agreement for a settlement of a woman's own property to be made or entered into by herself shall have any validity against debts contracted by her before marriage (*b*), and no settlement or agreement for a settlement shall have any greater force or validity against creditors of such woman than a like settlement or agreement for a settlement made or entered into by a man would have against his creditors.

settlements, and the power to make future settlements.

Married woman to be liable to the parish for the maintenance of her husband.

20. Where in England the husband of any woman having separate property becomes chargeable to any union or parish, the justices having jurisdiction in such union or parish may, in petty sessions assembled, upon application of the guardians of the poor, issue a summons against the wife, and make and enforce such order against her for the maintenance of her husband out of such separate property as by the thirty-third section of the Poor Law Amendment Act, 1868, they may now make and enforce against a husband for the maintenance of his wife if she becomes chargeable to any union or parish. Where in Ireland relief is given under the provisions of the Acts relating to the relief of the destitute poor to the husband of any woman having separate property, the cost price of such relief is hereby declared to be a loan from the guardians of the union in which the same shall be given, and shall be recoverable from such woman as if she were a feme sole by the same actions and proceedings as money lent.

31 & 32 Vict. c. 122.

Married woman to be liable to the parish for the maintenance of her children.

21. A married woman having separate property shall be subject to all such liability for the maintenance of her children and grandchildren as the husband is now by law subject to for the maintenance of her children and grandchildren: Provided always that nothing in

(*a*) See *supra*, p. 467, note (*a*); and *supra*, p. 906, note (*c*). The latter part of the section does not apply to settlements made before the Act, and property thereby settled with a restraint on anticipation is not liable to execution: *Beckett* v. *Tasker*, 19 Q. B. D. 7; *Smith* v. *Whitelock*, 55 L. J. Q. B. 286; 34 W. R. 414. See as to a second marriage, after the Act, of a widow, *Re Onslow*, 39 Ch. D. 622. In a settlement made since the Act, a restraint on anticipation may be effectually annexed to an interest not expressly given to the married woman for her separate use, inasmuch as the Act in effect supplies those words: *Re Lumley*, [1896] 2 Ch. 690. There is no repugnancy in a restraint on anticipation attached to a gift of a life estate without impeachment of waste: *S. C.*

(*b*) *Birmingham Excelsior Money Society* v. *Lane*, [1904] 1 K. B. 35.

45 & 46 Vict. c. 75.

this Act shall relieve her husband from any liability imposed upon him by law to maintain her children or grandchildren (*a*).

Repeal of 33 & 34 Vict. c. 93. 37 & 38 Vict. c. 50.

22. *The Married Women's Property Act*, 1870, *and the Married Women's Property Act*, 1870, *Amendment Act*, 1874, *are hereby repealed. Provided that such repeal shall not affect any act done or right acquired while either of such Acts was in force, or any right or liability of any husband or wife, married before the commencement of this Act, to sue or be sued under the provisions of the said repealed Acts or either of them, for or in respect of any debt, contract, wrong, or other matter or thing whatsoever, for or in respect of which any such right or liability shall have accrued to or against such husband or wife before the commencement of this Act* (*b*).

Legal representative of married woman.

23. For the purposes of this Act the legal personal representative of any married woman shall in respect of her separate estate have the same rights and liabilities and be subject to the same jurisdiction as she would be if she were living (*c*).

Interpretation of terms.

24. The word "contract" in this Act shall include the acceptance of any trust, or of the office of executrix or administratrix, and the provisions of this Act as to liabilities of married women shall extend to all liabilities by reason of any breach of trust or devastavit committed by any married woman being a trustee or executrix or administratrix either before or after her marriage, and her husband shall not be subject to such liabilities unless he has acted or intermeddled in the trust or administration (*d*). The word "property" in this Act includes a thing in action.

Commencement of Act.

25. The date of the commencement of this Act shall be the first of January one thousand eight hundred and eighty-three.

Extent of Act.

26. This Act shall not extend to Scotland.

Short title.

27. This Act may be cited as the Married Women's Property Act, 1882.

(*a*) By the Married Women's Property Act, 1908 (8 Edw. 7, c. 27), a married woman having separate property is made liable as a feme sole for the maintenance of her parent or parents.

(*b*) This section has been repealed by the Statute Law Revision Act, 1898.

(*c*) A husband who takes his wife's separate property *jure mariti* is her "legal personal representative" within this section, and liable thereunder to the extent of the property so taken: *Surman* v. *Wharton*, [1891] 1 Q. B. 491.

(*d*) It is not now necessary that the husband of a married woman administratrix should join in the administration bond: *In the Goods of Ayres*, 8 P. D. 168. And as to this section, see p. 58, *supra*, note (*a*).

APPENDIX XIII.

56 & 57 VICT. CAP. 63.

56 & 57 VICT. c. 63.

AN ACT TO AMEND THE MARRIED WOMEN'S PROPERTY ACT, 1882.

[*5th December*, 1893.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Effect of contracts by married women.

1. Every contract hereafter (*a*) entered into by a married woman, otherwise than as agent (*b*),

(*a*) shall be deemed to be a contract entered into by her with respect to and to bind her separate property whether she is or is not in fact possessed of or entitled to any separate property at the time when she enters into such contract;

(*b*) shall bind all separate property which she may at that time or thereafter be possessed of or entitled to; and

(*c*) shall also be enforceable by process of law against all property which she may thereafter while discovert be possessed of or entitled to;

Provided that nothing in this section contained shall render available to satisfy any liability or obligation arising out of such contract any separate property which at that time or thereafter she is restrained from anticipating (*c*).

Costs may be ordered to be paid out of property subject to restraint on anticipation.

2. In any action or proceeding now or hereafter instituted by a woman or by a next friend on her behalf, the court before which such action or proceeding is pending shall have jurisdiction by judgment or order from time to time to order payment of the costs of the opposite party out of property which is subject to a restraint on anticipation, and may enforce such payment by the appointment

(*a*) See *Re Wheeler*, [1904] 2 Ch. 66.
(*b*) See *Paquin, Limtd.* v. *Beauclerk*, [1906] A. C. 148.
(*c*) See *Barnett* v. *Howard*, [1900] 2 Q. B. 785, where the coverture had ceased, followed in *Brown* v. *Dimberley*, [1904] 1 K. B. 28.

56 & 57 Vict. c. 63.

of a receiver and the sale of the property or otherwise as may be just (*a*).

Will of married woman.

3. Section twenty-four of the Wills Act, 1837, shall apply to the will of a married woman made during coverture whether she is or is not possessed of or entitled to any separate property at the time of making it, and such will shall not require to be re-executed or republished after the death of her husband (*b*).

Repeal.

4. *Sub-sections* (3) *and* (4) *of section one of the Married Women's Property Act*, 1882, *are hereby repealed* (*c*).

Short title.

5. This Act may be cited as the Married Women's Property Act, 1893.

Extent.

6. This Act shall not apply to Scotland.

(*a*) As to the proper form of order where an action brought by a married woman has been dismissed with costs, see *Davies* v. *Treharris Brewery Company*, W. N. 1894, p. 198. The section applies only to litigation initiated by a woman, and not to an appeal by her from a judgment in an action or proceeding to which she is a defendant: *Hood Barrs* v. *Heriot*, [1897] A. C. 177. As to the meaning of the word "instituted," see *Moran* v. *Place*, [1896] P. 214; *Nunn & Co.* v. *Tyson*, [1901] 2 K. B. 487; *Crickitt* v. *Crickitt*, [1902] P. 177; and upon the question how far the Act is retrospective, *Re Godfrey*, W. N. 1895, p. 12; and *Re Wylie*, [1895] 2 Ch. 116.

(*b*) The section, which overrules *Willock* v. *Noble*, L. R. 7 H. L. 589, applies to every will of a married woman dying after the date of the Act: *Re Wylie*, *ubi supra*. Cf. *Re James*, [1910] 1 Ch. 157.

(*c*) Repealed by the Statute Law Revision Act, 1908.

APPENDIX XIV.

7 EDW. 7, CAP. 18.

7 EDW. 7, c. 18.

AN ACT TO AMEND THE MARRIED WOMEN'S PROPERTY ACT, 1882.

[21*st August*, 1907.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Dispositions of trust estates by married women (*a*).

1.—(1.) A married woman is able, without her husband, to dispose of, or to join in disposing of, real or personal property held by her solely or jointly with any other person as trustee or personal representative in like manner as if she were a feme sole.

(2.) This section operates to render valid and confirm all such dispositions made after the thirty-first day of December one thousand eight hundred and eighty-two, whether before or after the commencement of this Act, but, where any title or right has been acquired through or with the concurrence of the husband before the commencement of this Act, that title or right shall prevail over any title or right which would otherwise be rendered valid by this section.

Settlements of a married woman's separate property (*b*). 45 & 46 Vict. c. 75.

2.—(1.) Notwithstanding section nineteen of the Married Women's Property Act, 1882, a settlement or agreement for a settlement made after the commencement of this Act by the husband or intended husband, whether before or after marriage, respecting the property of any woman he may marry or have married, shall not be valid unless it is executed by her if she is of full age, or confirmed by her after she attains full age.

(2.) But if she dies an infant any covenant or disposition by her husband contained in the settlement or agreement shall bind or pass any interest in any property of hers to which he may become entitled on her death and which he could have bound or disposed of if this Act had not been passed.

(*a*) See p. 58, *supra*, n. (*a*), and p. 937, *infra*, n. (*b*).
(*b*) See p. 906, *supra*, n. (*c*), *ad fin.*

7 Edw. 7, c. 18.

(3.) Nothing in this section shall render invalid any settlement or agreement for a settlement made or to be made under the provisions of the Infant Settlements Act, 1855.

18 & 19 Vict. c. 43.

Married woman entitled to prior estate to be protector of settlement alone.

3.—(1.) Where a married woman would, if single, be the protector of a settlement in respect of a prior estate, which is by virtue of the Married Women's Property Act, 1882, made her separate property, then she alone shall, in respect of that estate, be the protector of the settlement.

(2.) This section applies to disentailing assurances and surrenders made after the thirty-first day of December one thousand eight hundred and eighty-two, and as well before as after the commencement of this Act.

Short title; commencement; construction.

4.—(1.) This Act may be cited as the Married Women's Property Act, 1907.

(2.) This Act shall come into operation on the first day of January one thousand nine hundred and eight.

(3.) This Act shall not extend to Scotland.

45 & 46 Vict. c. 75.
47 Vict. c. 14.
56 & 57 Vict. c. 63.

(4.) This Act shall be construed with the Married Women's Property Acts, 1882, 1884, and 1893, and those Acts and this Act may be cited together as the Married Women's Property Acts, 1882 to 1907.

APPENDIX XV.

51 & 52 VICT. CAP. 59. 51 & 52 VICT. c. 59.

AN ACT TO AMEND THE LAW RELATING TO THE DUTIES, POWERS, AND LIABILITY OF TRUSTEES (*a*).

[24*th December*, 1888.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by authority of the same, as follows; that is to say,

Short title, extent, and definition.

1.—(1.) This Act may be cited as the Trustee Act, 1888.

(2.) This Act shall not extend to Scotland.

(3.) For the purposes of this Act the expression "trustee" shall be deemed to include an executor or administrator and a trustee whose trust arises by construction or implication of law as well as an express trustee, but not the official trustee of charitable funds.

(4.) The provisions of this Act relating to a trustee shall apply as well to several joint trustees as to a sole trustee.

Statute of Limitations may be pleaded by trustees (*b*).

8.—(1.) In any action or other proceeding against a trustee or any person claiming through him, except where the claim is founded upon any fraud or fraudulent breach of trust to which the trustee

(*a*) The whole of this Act, with the exceptions of sects 1 and 8, which are set out in this Appendix, has been repealed for purposes of consolidation by the Trustee Act, 1893. The provisions contained in the repealed sections have been re-enacted in substantially the same form by the various sections of that Act, which see together with the notes thereto (App. XVI., *infra*).

(*b*) Sect. 25, sub-sect. 2 of the Judicature Act, 1873, which enacts that "no claim of a cestui que trust against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any statute of limitations," appears to be by implication repealed by this section to the extent of the relief afforded by this Act to trustees. As to what is an "express trust," see *Soar* v. *Ashwell*, [1893] 2 Q. B. 390. A trust established by parol evidence is an express trust: *Rochefoucauld* v. *Boustead*, [1897] 1 Ch. 196. In practice, as regards *constructive* trusts, lapse of time has been held a bar by analogy to the statute of limitations (see *Soar* v. *Ashwell*, *ubi supra*). This section

51 & 52 Vict. c. 59.

was party or privy (*a*), or is to recover trust property, or the proceeds thereof still retained by the trustee, or previously received by the trustee and converted to his use (*b*), the following provisions shall apply:

(*a.*) All rights and privileges conferred by any statute of limitations shall be enjoyed in the like manner and to the like extent as they would have been enjoyed in such action or other proceeding if the trustee or person claiming through him had not been a trustee or person claiming through him (*c*):

(*b.*) If the action or other proceeding is brought to recover money or other property, and is one to which no existing statute of limitations applies, the trustee or person claiming through him shall be entitled to the benefit of and be at liberty to plead the lapse of time as a bar to such action or other proceeding in the like manner and to the like extent as if the claim had been against him in an action

applies to constructive and express trustees alike (see the wide definition of "trustee" in sect. 1, *supra*). It has been applied for the protection of directors who, acting ultra vires of their powers but not fraudulently, misapplied funds of the company: *Re Lands Allotment Co.*, [1894] 1 Ch. 616. But a trustee in bankruptcy is not entitled to the benefit of it: *Re Cornish*, W. N. 1895, p. 152. For a general discussion of the section, see *How* v. *Earl Winterton*, [1896] 2 Ch. 626. Some further relief is given to trustees by sect. 3 of the Judicial Trustees Act, 1896 (see p. 930, *infra*, n. (*a*)).

(*a*) The words "party or privy" indicate moral complicity, some personal participation in the fraud (*Thorne* v. *Heard*, [1894] 1 Ch. 599; [1895] A. C. 495; *Re McCallum*, [1901] 1 Ch. 143, 161). Observe, however, that the decisions (of which *Blair* v. *Bromley*, 2 Ph. 354, is an example) as to the responsibility of partners and principals for the fraudulent acts of their co-partners and agents are not affected by this statute (*Moore* v. *Knight*, [1891] 1 Ch. 547; *Thorne* v. *Heard*, *ubi supra*).

(*b*) "Still retained" means retained at the date of the writ in the action. And the trust property is not "retained" if it has been lost by the negligence of the trustee, or by any non-fraudulent act or omission on his part; it is only "retained" if the trustee or an agent for him has it so that he can get it (*Thorne* v. *Heard*, *ubi supra*). See also *Wassell* v. *Leggatt*, [1896] 1 Ch. 554, an action by a wife against her husband's executors to recover separate estate forcibly taken possession of by the husband.

(*c*) It has been held by Fry, J., in *Re Bowden*, 45 Ch. D. 444, that this clause does not apply to an action for breach of trust on the ground (which seems logically impregnable) that such an action cannot be brought against any one who is not a trustee, and that there is no right or privilege conferred by any statute of limitations in respect of a breach of trust. Accordingly the cases under the section have hitherto proceeded mainly upon clause (*b*). But see *Thorne* v. *Heard*, *ubi supra*, where clause (*a*) was apparently treated as the governing part of the section, and the logical difficulties apparent to Fry, J., were disregarded; and *How* v. *Earl Winterton*, *ubi supra*.

of debt for money had and received, but so nevertheless that the statute shall run against a married woman entitled in possession for her separate use, whether with or without a restraint upon anticipation, but shall not begin to run against any beneficiary unless and until the interest of such beneficiary shall be an interest in possession (*a*). 51 & 52 Vict. c. 59.

(2.) No beneficiary, as against whom there would be a good defence by virtue of this section, shall derive any greater or other benefit from a judgment or order obtained by another beneficiary than he could have obtained if he had brought such action or other proceeding and this section had been pleaded (*b*).

(3.) This section *shall apply only to actions or other proceedings commenced after the first day of January one thousand eight hundred and ninety, and* shall not deprive any executor or administrator of any right or defence to which he is entitled under any existing statute of limitations (*c*).

(*a*) Under this clause trustees have successfully defended actions in respect of loss occasioned by investments of trust property upon mortgages of insufficient value: see *Re Bowden*, 45 Ch. D. 444; *Re Somerset*, [1894] 1 Ch. 231. Payment to the cestui que trust of interest in respect of the mortgage as the trustee receives it from the mortgagor, is not an admission by the trustee of his liability to the debt sought to be recovered in the action so as to deprive him of the protection of this clause: *Re Somerset*, *ubi supra*. And see also as to its operation and effect, *Re Swain*, [1891] 3 Ch. 233, an action against a trustee by a residuary legatee to recover loss arising from delay in realising the residue; *Re Page*, [1893] 1 Ch. 304, where a trustee was sued for expending the whole of a residue payable to the plaintiff on attaining twenty-one in maintaining and educating him during minority; *Re Timmis*, [1902] 1 Ch. 176, where executors and trustees had paid a settled share of residue to the tenant for life; and cf. *Re Gurney*, [1893] 1 Ch. 590; *Re Tucker*, [1894] 1 Ch. 724; *Mara* v. *Browne*, [1895] 2 Ch. 69; on appeal [1896] 1 Ch. 199; *Robinson* v. *Harkin*, [1896] 2 Ch. 415; *How* v. *Earl Winterton*, *ubi supra*; and *Re Fountaine*, [1909] 2 Ch. 382. It should be observed that the section has in no way altered the principles which determine the time when a cause of action accrues (*Moore* v. *Knight*; *Thorne* v. *Heard*, *ubi supra*).

(*b*) See *Re Somerset*, [1894] 1 Ch. 231, in which tenant for life and infant remaindermen were plaintiffs, and the trustees had a good defence under the section as against the tenant for life.

(*c*) The words in italics have been repealed by the Statute Law Revision Act, 1908.

APPENDIX XVI.

56 & 57 Vict. c. 53.

56 & 57 VICT. Cap. 53.

AN ACT TO CONSOLIDATE ENACTMENTS RELATING TO TRUSTEES.

[22*nd September*, 1893.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I.

Investments.

Authorised investments (*a*).

1. A trustee (*b*) may, unless expressly forbidden by the instrument (if any) creating the trust (*b*), invest any trust funds in his

(*a*) This section substantially replaces sect. 3 of the Trust Investment Act, 1889, the whole of which Act, with the exception of sects. 1 and 7, is repealed by this Act. The Trust Investment Act, 1889, so far as now subsisting, is as follows:—

Sect. 1. This Act may be cited as the Trust Investment Act, 1889.

Sect. 7. Where the council of any county or borough or any urban or rural sanitary authority are authorised or required to invest any money for the purpose of a loans fund or a sinking fund, any enactment relating to such investment shall be modified so far as to allow such money to be invested in any of the stocks, funds, shares or securities in which trustees are authorised by this Act to invest, except that such council or authority shall not by virtue of this section invest in any stocks, funds, shares, or securities issued or created by themselves, nor in real or heritable securities.

Provided that it shall not be lawful for any such council or authority to retain any securities which are liable to be redeemed at a fixed time at par or at any other fixed rate, and are at a price exceeding their redemption value, unless more than fifteen years will elapse before the time fixed for redemption.

The section has been amended by the Colonial Stock Act, 1900 (63 & 64 Vict. c. 62), s. 2, authorising trustees to invest in certain colonial stocks as to which there have been observed such conditions as may be prescribed by the Treasury. The conditions were published in the *Times* of the 15th December, 1900.

(*b*) See the definitions, sect. 50, *infra*. And see sect. 4, *infra*. A corporation holding funds for charitable purposes appears to be within

hands (*a*), whether at the time in a state of investment or not, in manner following, that is to say: 56 & 57 Vict. c. 53.

(*a*) In any of the parliamentary stocks or public funds or Government securities of the United Kingdom:

(*b*) On real (*b*) or heritable securities in Great Britain or Ireland:

(*c*) In the stock of the Bank of England or the Bank of Ireland:

(*d*) In India Three and a Half per cent. stock and India Three per cent. stock, or in any other capital stock which may at any time hereafter be issued by the Secretary of State in Council of India under the authority of Act of Parliament, and charged on the revenues of India:

(*e*) In any securities the interest of which is for the time being guaranteed by Parliament:

(*f*) In consolidated stock created by the Metropolitan Board of Works, or by the London County Council, or in debenture stock created by the receiver for the Metropolitan Police District:

(*g*) In the debenture or rentcharge, or guaranteed or preference stock of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having during each of the ten years last past before the date of investment paid a dividend at the rate of not less than three per centum per annum on its ordinary stock (*c*):

(*h*) In the stock of any railway or canal company in Great Britain or Ireland whose undertaking is leased in perpetuity or for a term of not less than two hundred years at a fixed rental to any such railway company as is mentioned in sub-section (*g*), either alone or jointly with any other railway company:

(*i*) In the debenture stock of any railway company in India the interest on which is paid or guaranteed by the Secretary of State in Council of India:

the section: *Re Manchester Royal Infirmary*, 43 Ch. D. 420; but not trustees of a building society holding funds invested in their names under sect. 25 of the Building Societies Act, 1874: *Re National, &c. Building Society*, *ib.* 431. Trust funds under administration by the Court will not be invested in securities prohibited by the settlor: *Ovey* v. *Ovey*, [1900] 2 Ch. 524. As to the words "expressly forbidden," see *Re Burke*, [1908] 2 Ch. 248.

(*a*) The words "trust funds in his hands" include all trust funds whether in a state of investment or not: *Hume* v. *Lopes*, [1892] A. C. 112. As to whether trustees may set apart any of the stocks mentioned in this section to answer an annuity given by a will, see *Re Outhwaite*, [1891] 3 Ch. 494.

(*b*) See sect. 5 (1), *infra*.

(*c*) See *Re Tattersall*, [1906] 2 Ch. 399.

56 & 57 Vict. c. 53.

(*j*) In the "B" annuities of the Eastern Bengal, the East Indian and the Scinde Punjaub and Delhi Railways, and any like annuities which may at any time hereafter be created on the purchase of any other railway by the Secretary of State in Council of India, and charged on the revenues of India, and which may be authorised by Act of Parliament to be accepted by trustees in lieu of any stock held by them in the purchased railway; also in deferred annuities comprised in the register of holders of annuity Class D. and annuities comprised in the register of annuitants Class C. of the East Indian Railway Company:

(*k*) In the stock of any railway company in India upon which a fixed or minimum dividend in sterling is paid or guaranteed by the Secretary of State in Council of India, or upon the capital of which the interest is so guaranteed:

(*l*) In the debenture or guaranteed or preference stock of any company in Great Britain or Ireland, established for the supply of water for profit, and incorporated by special Act of Parliament or by Royal Charter, and having during each of the ten years last past before the date of investment paid a dividend of not less than five pounds per centum on its ordinary stock:

(*m*) In nominal or inscribed stock issued, or to be issued by the corporation of any municipal borough having, according to the returns of the last census (*a*) prior to the date of investment, a population exceeding fifty thousand, or by any county council, under the authority of any Act of Parliament or Provisional Order:

(*n*) In nominal or inscribed stock issued, or to be issued, by any commissioners incorporated by Act of Parliament for the purpose of supplying water, and having a compulsory power of levying rates over an area having, according to the returns of the last census prior to the date of investment, a population exceeding fifty thousand, provided that during each of the ten years last past before the date of investment the rates levied by such commissioners shall not have exceeded eighty per centum of the amount authorised by law to be levied (*b*):

(*a*) See *Re Druitt*, [1903] 1 Ch. 446.

(*b*) By virtue of the Metropolis Water Act, 1902, s. 17 (4), Metropolitan Water Stock is included in the securities in which trustees may invest under the powers of this Act.

(*o*) In any of the stocks, funds, or securities for the time being authorised for the investment of cash under the control or subject to the order of the High Court (*a*): 56 & 57 Vict. c. 53.

and may also from time to time vary (*b*) any such investment.

(*a*) "Cash under the control of the Court," means cash standing in Court in any cause or matter. See *Ex parte St. John Baptist College, Oxford*, 22 Ch. D. 93, where most of the previous authorities as to the meaning of these words are referred to, and *Jackson* v. *Tyas*, W. N. 1883, p. 91. The following general order under this section is now in force:

R.S.C. Order XXII., Rule 17.

Investment of cash under the control of the Court.

"1. Rule 1 of the Rules of the Supreme Court, August, 1888, is hereby annulled (except so far as it annulled Order XXII., Rule 17, of the Rules of the Supreme Court, 1883), and the following Rule shall stand in lieu thereof:—

Cash under the control of or subject to the order of the Court may be invested in the following stocks, funds, or securities, namely:

Two and Three-quarters per cent. Consolidated Stock (to be called after the 5th of April, 1903, Two and a Half per cent. Consolidated Stock).

Consolidated Three Pounds per cent. Annuities.

Reduced Three Pounds per cent. Annuities.

Two Pounds Fifteen Shillings per cent. Annuities.

Two Pounds Ten Shillings per cent. Annuities.

Local Loans Stock under the National Debt and Local Loans Act, 1887.

Exchequer Bills.

Bank Stock.

India Three and a Half per cent. Stock.

India Three per cent. Stock.

India Two and a Half per cent. Stock.

Indian Guaranteed Railway Stocks or Shares, provided in each case that such stocks or shares shall not be liable to be redeemed within a period of fifteen years from the date of investment.

Stocks of Colonial Governments guaranteed by the Imperial Government, or in respect of which the provisions of the Colonial Stock Act, 1900, and of section 2 (2) of the Trustee Act, 1893, are for the time being complied with.

Mortgage of freehold and copyhold estates respectively in England and Wales.

Metropolitan Consolidated Stock, Three Pounds Ten Shillings per cent.

Three per cent. Metropolitan Consolidated Stock.

Two and a Half per cent. London County Consolidated Stock

Three per cent. London County Consolidated Stock.

Inscribed Two and a Half per cent. Debenture Stock issued by the Corporation of London, and secured by a trust deed dated 24th June, 1897.

Inscribed Three per cent. Debenture Stock issued by the Corporation of London, and secured by supplemental trust deed dated June 1st, 1905.

London County Council Three and a Half per cent. Stock.

Debenture, preference, guaranteed, or rentcharge stocks of railways

(*b*) The power to vary appears to be confined to such investments as are mentioned in this section, and therefore if a trust instrument allows a wider range it should contain an express power of variation. See *Re Dick*, [1891] 1 Ch. 423.

56 & 57 Vict. c. 53.

Purchase at a premium of redeemable stocks.

2.—(1.) A trustee may under the powers of this Act invest in any of the securities mentioned or referred to in section one of this Act, notwithstanding that the same may be redeemable, and that the price exceeds the redemption value.

(2.) Provided that a trustee may not under the powers of this Act purchase at a price exceeding its redemption value any stock mentioned or referred to in sub-sections (*g*), (*i*), (*k*), (*l*), and (*m*) of section one, which is liable to be redeemed within fifteen years of the date of purchase at par or at some other fixed rate, or purchase any such stock as is mentioned or referred to in the sub-sections aforesaid, which is liable to be redeemed at par or at some other fixed rate, at a price exceeding fifteen per centum above par or such other fixed rate.

(3.) A trustee may retain until redemption any redeemable stock, fund, or security which may have been purchased in accordance with the powers of this Act.

Discretion of trustees.

3. Every power conferred by the preceding sections shall be exercised according to the discretion of the trustee, but subject to any consent required by the instrument, if any, creating the trust with respect to the investment of the trust funds.

Application of preceding sections.

4. The preceding sections shall apply as well to trusts created before as to trusts created after the passing of this Act, and the powers thereby conferred shall be in addition to the powers conferred by the instrument, if any, creating the trust.

Enlargement of express powers of investment(*a*).

5.—(1.) A trustee having power to invest in real securities, unless expressly forbidden by the instrument creating the trust,

in Great Britain or Ireland, having for ten years next before the date of investment paid a dividend on ordinary stock or shares.

Debenture, preference, guaranteed, or rentcharge stocks of railways in Great Britain or Ireland, guaranteed by railway companies owning railways in Great Britain or Ireland, which have for ten years next before the date of investment paid a dividend on ordinary stock or shares.

Nominal debentures or nominal debenture stock under the Local Loans Act, 1875, or under the Isle of Man Loans Act, 1880, provided in each case that such debentures or stock shall not be liable to be redeemed within a period of fifteen years from the date of investment.

2. This rule shall come into operation on the 26th of November, 1888, and may be cited as the Rule of the Supreme Court, November, 1888, or may be cited according to the heading thereof with reference to the Rules of the Supreme Court, 1883."

(*a*) Sub-sect. 1 of this section re-enacts sect. 9 (repealed) of the Trustee Act, 1888, which legalised a view that had been widely entertained and acted upon, though not judicially sanctioned. See *Re Boyd's S. E.*, 14 Ch. D. 626; *Leigh* v. *Leigh*, W. N. 1886, p. 151.

may invest and shall be deemed to have always had power to invest— 56 & 57 Vict. c. 53.

(*a*) on mortgage of property held for an unexpired term of not less than two hundred years, and not subject to a reservation of rent greater than a shilling a year, or to any right of redemption or to any condition for re-entry, except for non-payment of rent; and

(*b*) on any charge, or upon mortgage of any charge, made under the Improvement of Land Act, 1864. 27 & 28 Vict. c. 114.

(2.) A trustee having power to invest in the mortgages or bonds of any railway company or of any other description of company may, unless the contrary is expressed in the instrument authorising the investment, invest in the debenture stock of a railway company or such other company as aforesaid.

(3.) A trustee having power to invest money in the debentures or debenture stock of any railway or other company may, unless the contrary is expressed in the instrument authorising the investment, invest in any nominal debentures or nominal debenture stock issued under the Local Loans Act, 1875 (*a*). 38 & 39 Vict. c. 83.

(4.) A trustee having power to invest money in securities in the Isle of Man, or in securities of the government of a colony, may, unless the contrary is expressed in the instrument authorising the investment, invest in any securities of the Government of the Isle of Man, under the Isle of Man Loans Act, 1880. 43 & 44 Vict. c. 8.

(5.) A trustee having a general power to invest trust moneys in or upon the security of shares, stock, mortgages, bonds, or debentures of companies incorporated by or acting under the authority of an Act of Parliament, may invest in, or upon the security of, mortgage debentures duly issued under and in accordance with the provisions of the Mortgage Debenture Act, 1865. 28 & 29 Vict. c. 78.

Power to invest, notwithstanding drainage charges.

6. A trustee having power to invest in the purchase of land or on mortgage of land may invest in the purchase, or on mortgage of any land, notwithstanding the same is charged with a rent under the powers of the Public Money Drainage Acts, 1846 to 1856, or the Landed Property Improvement (Ireland) Act, 1847, or by an absolute order made under the Improvement of Land Act, 1864, unless the terms of the trust expressly provide that the land to be purchased or taken in mortgage shall not be subject to any such prior charge. 10 & 11 Vict. c. 32.

(*a*) As to this sub-section, see *Re Tattersall*, [1906] 2 Ch. 399.

56 & 57 Vict. c. 53.

Trustees not to convert inscribed stock into certificates to bearer.

26 & 27 Vict. c. 73.
33 & 34 Vict. c. 71.
38 & 39 Vict. c. 83.
40 & 41 Vict. c. 59.

7.—(1.) A trustee, unless authorised by the terms of his trust, shall not apply for or hold any certificate to bearer issued under the authority of any of the following Acts, that is to say:

(*a*) The India Stock Certificate Act, 1863;

(*b*) The National Debt Act, 1870;

(*c*) The Local Loans Act, 1875;

(*d*) The Colonial Stock Act, 1877.

(2.) Nothing in this section shall impose on the Bank of England or of Ireland, or on any person authorised to issue any such certificates, any obligation to inquire whether a person applying for such a certificate is or is not a trustee, or subject them to any liability in the event of their granting any such certificate to a trustee, nor invalidate any such certificate if granted.

Loans and investments by trustees not chargeable as breaches of trust (*a*).

8.—(1.) A trustee lending money on the security of any property on which he can lawfully lend shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, provided that it appears to the Court that in making the loan the trustee was acting upon a report as to the value of the property made by a person whom he reasonably believed to be an able practical surveyor or valuer instructed and employed independently of any owner of the property, whether such surveyor or valuer carried on business in the locality where the property is situate or

(*a*) This section is in effect a re-enactment of sect. 4 (repealed) of the Trustee Act of 1888. It is to be observed that the concluding words of sub-sect. (1) of the repealed section, enacting that the section "shall apply to a loan upon property of any tenure, whether agricultural or house or other property," are not re-enacted; but there seems no ground for supposing that the present section is of less extensive application, so as, *e.g.*, to place house property upon a different footing from other property. For a general discussion of this section, see *Re Nightingale*, [1909] 1 Ch. 389. For the previous law on this subject see Lewin on Trusts, 8th ed., pp. 324 *et seq.*; and see also *Learoyd* v. *Whiteley*, 12 App. Cas. 727; *Rae* v. *Meek*, 14 App. Cas. 558; *Re Somerset*, [1894] 1 Ch. 231; *Re Nightingale*, *ubi supra*. It is expressly provided by the Trustee Act (1893) Amendment Act, 1894 (App. XVII., *infra*), s. 4, that a trustee shall not be liable for breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorised by the instrument of trust or by the general law. And see also sect. 3 of the Judicial Trustees Act, 1896, by which the Court is empowered to relieve from personal liability for breaches of trust where a trustee "has acted honestly and reasonably, and ought fairly to be excused for the breach of trust, and for omitting to obtain the directions of the Court in the matter in which he committed such breach." The latter section has been considered in *Re Kay*, [1897] 2 Ch. 518; *Re Stuart*, *ib.* 583; *Perrins* v. *Bellamy*, [1898] 2 Ch. 521; on appeal, [1899] 1 Ch. 797 (where trustees were excused for a breach of trust in selling trust property where they had no power of sale); *Re Grindey*, [1898] 2 Ch. 593; *Re Dive*, [1909] 1 Ch. 328; *Re Nightingale*, [1909] 1 Ch. 389.

elsewhere, and that the amount of the loan does not exceed two equal third parts of the value of the property as stated in the report, and that the loan was made under the advice of the surveyor or valuer expressed in the report. 56 & 57 Vict. c. 53.

(2.) A trustee lending money on the security of any leasehold property shall not be chargeable with breach of trust only upon the ground that in making such loan he dispensed either wholly or partly with the production or investigation of the lessor's title (*a*).

(3.) A trustee shall not be chargeable with breach of trust only upon the ground that in effecting the purchase of or in lending money upon the security of any property he has accepted a shorter title than the title which a purchaser is, in the absence of a special contract, entitled to require, if in the opinion of the Court the title accepted be such as a person acting with prudence and caution would have accepted.

(4.) This section applies to transfers of existing securities as well as to new securities, and to investments made as well before as after the commencement of this Act, except where an action or other proceeding was pending with reference thereto on the twenty-fourth day of December one thousand eight hundred and eighty-eight.

Liability for loss by reason of improper investments (*b*).

9.—(1.) Where a trustee improperly advances trust money on a mortgage security which would at the time of the investment be a proper investment in all respects for a smaller sum than is actually advanced thereon the security shall be deemed an authorised investment for the smaller sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest.

(2.) This section applies to investments made as well before as after the commencement of this Act except where an action or other proceeding was pending with reference thereto on the twenty-fourth day of December one thousand eight hundred and eighty-eight.

(*a*) See the Vendor and Purchaser Act, 1874 (App. II., *supra*), s. 2, rule 1, and s. 1. But according to *Imray* v. *Oakshette*, [1897] 2 Q. B. 218, it would apparently be an act of negligence on the part of a trustee to dispense with the investigation.

(*b*) This section is a re-enactment of sect. 5 (repealed) of the Trustee Act, 1888. See the cases mentioned in note (*a*), *supra*, p. 930.

56 & 57 Vict. c. 53.

PART II.

Various Powers and Duties of Trustees.

Appointment of New Trustees (a).

Power of appointing new trustees.

10.—(1.) Where a trustee (*b*), either original or substituted, and whether appointed by a court or otherwise, is dead, or remains out of the United Kingdom for more than twelve months (*c*), or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses or is unfit (*d*) to act therein, or is incapable (*e*) of acting therein, then the person or persons nominated for the purpose (*f*) of appointing new trustees by the instrument,

(*a*) Sects. 10, 11, and 12 of this Act are a re-enactment with slight alterations of the provisions relating to the appointment of new trustees and the consequent vesting of the trust property which were contained in sects. 31, 32, and 34 of the Conv. Act, 1881; sect. 5 of the Conv. Act, 1882; and sect. 6 of the Conv. Act, 1892, which sections are by this Act repealed for the purpose of consolidation. Reference may be made here to the Public Trustee Act, 1906 (6 Edw. 7, c. 55), which authorises the appointment of the public trustee to be custodian trustee of any trust or to be an ordinary trustee.

(*b*) The term includes an executor or administrator, and a constructive trustee. See the definition in sect. 50, *infra*.

(*c*) *I.e.*, calendar months (52 & 53 Vict. c. 63, s. 3). And see *Re Coates* to *Parsons*, 34 Ch. D. 370, from which it would appear that if it is known where the trustee who is abroad is, and he is willing to act in the exercise of the provisions of the section, he ought to join in the appointment of the new trustee. As to the meaning of "abroad," see *Re Earl of Stamford*, [1896] 1 Ch. 288; and cf. *Re Arbib and Class's Contract*, [1891] 1 Ch. 601; *Re Walker*, [1901] 1 Ch. 259, where the trustee had remained abroad for twelve months except during one week when he stayed in London, and an appointment of a new trustee purporting to be made under this section was held invalid.

(*d*) See as to bankruptcy of a trustee, *Re Adams's Trust*, 12 Ch. D. 634.

(*e*) Infancy is not incapacity within the meaning of this section (*Re Tallatire*, W. N. 1885, p. 191); lunacy or unsoundness of mind is, but in the case of a lunatic so found it is perhaps better that the appointment of a new trustee in his place should be made by the Court: see *Re Elizabeth Blake*, W. N. 1887, p. 173. A married woman is not "incapable" of acting in a trust. See the M. W. P. Act, 1882 (App. XII., *supra*), ss. 1, 18, and 24; the M. W. P. Act, 1907 (App. XIV., *supra*), s. 1; *Re Hawksworth*, W. N. 1887, p. 113; and p. 58, *supra*, n. (*a*).

(*f*) If several persons nominated for the purposes of this section cannot agree in the selection of a new trustee, the power is exerciseable by the person or persons to whom by the section the power is given in the event of there being no nominated persons able and willing to act: *Re Sheppard's Settlement Trusts*, W. N. 1888, p. 234. See also *Cradock* v. *Witham*, W. N. 1895, p. 75, where the person having the right of nomination could not be found; and *Re Wheeler*, [1896] 1 Ch. 315, where the trust instrument empowered persons to appoint new trustees in the event of a trustee becoming incapable, and a trustee became unfit but not incapable: *Re Routledge's Trusts*, [1909] 1 Ch. 280, where the personal representatives

if any, creating the trust, or if there is no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee (*a*), may, by writing, appoint another person or other persons (*b*) to be a trustee or trustees in the place of the trustee dead, remaining out of the United Kingdom, desiring to be discharged, refusing, or being unfit or being incapable, as aforesaid (*c*). 56 & 57 Vict. c. 53.

(2.) On the appointment of a new trustee for the whole or any part of trust property—

(*a*) the number of trustees may be increased (*d*); and

(*b*) a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees; or, if only one trustee was originally appointed, then one separate trustee may be so appointed for the first-mentioned part (*e*); and

of the last surviving trustee had acted and were displaced by an appointment under this section.

(*a*) A sole trustee is included: see *Re Shufto's Trusts*, 29 Ch. D. 247; and "continuing trustee" includes, by virtue of sub-sect. 4, a retiring trustee if willing to join in making the appointment: see *Re Glenny and Hartley*, 25 Ch. D. 611; *Re Norris*, 27 Ch. D. 333; and *Re Coates to Parsons*, *ubi supra*. And as to who are "personal representatives" within the section, see *Re Parker's Trusts*, [1894] 1 Ch. 707, where a last surviving trustee had appointed both general and special executors; *Re Boucherett*, [1908] 1 Ch. 180, where the appointment was made by the sole proving executor, there being two other executors living who had neither proved nor renounced probate.

(*b*) Since the Bodies Corporate (Joint Tenancy) Act, 1899 (62 & 63 Vict. c. 20), enables a corporation to hold property in joint tenancy with an individual, a limited company may be appointed a trustee under this section: see *Re Thompson*, [1905] 1 Ch. 229.

(*c*) The power cannot be exercised by will: *Re Parker's Trusts*, *ubi supra*. And the better opinion seems to be that it is not exerciseable by the personal representatives of a sole trustee of a will dying in the testator's lifetime: see *Nicholson* v. *Field*, [1893] 2 Ch. 511. The person in whom the power is vested is under no obligation to exercise it (*Re Sarah Knight's Will*, 26 Ch. D. 82); but if he desires to exercise the power the Court has no jurisdiction to take it from him by itself appointing new trustees; *Re Higginbottom*, [1892] 3 Ch. 132. It has been held that the donee of the power cannot appoint himself: *Re Sampson*, [1906] 1 Ch. 435. As to his appointing his solicitor, see *Re Earl of Stamford*, [1896] 1 Ch. 288; *Re Spencer's S. E.*, [1903] 1 Ch. 75.

(*d*) The power to increase only arises when a vacancy is being supplied: *Re Gregson's Trusts*, 34 Ch. D. 209.

(*e*) In *Re Hetherington's Trusts*, 34 Ch. D. 211, trusts were held to be

56 & 57 Vict. c. 53.

(c) it shall not be obligatory to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed; but except where only one trustee was originally appointed, a trustee shall not be discharged under this section from his trust unless there will be at least two trustees to perform the trust; and

(d) any assurance or thing requisite for vesting the trust property, or any part thereof, jointly in the persons who are the trustees, shall be executed or done.

(3.) Every new trustee so appointed, as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in him, shall have the same powers, authorities, and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

(4.) The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section (*a*).

(5.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained (*b*).

(6.) This section applies to trusts created either before or after the commencement of this Act.

Retirement of trustee (*c*).

11.—(1.) Where there are more than two trustees, if one of them by deed declares that he is desirous of being discharged from the

"distinct," which might in a certain event coalesce. It was considered doubtful before the enactment of sect. 6 of the Conv. Act, 1892, which this sub-section replaces, whether separate trustees could be appointed for a part of the trust property, except when an appointment was being made of new trustees of the whole property: see *Savile* v. *Couper*, 36 Ch. D. 520; *Re Moss's Trusts*, 37 Ch. D. 513.

(*a*) By virtue of the latter part of this sub-section it is competent for all the trustees of an instrument to retire at once and appoint new trustees in their place under the section.

(*b*) See *Re Walker and Hughes's Contract*, 24 Ch. D. 698; *Cecil* v. *Langdon*, 28 Ch. D. 1; *Re Lloyd's Trusts*, W. N. 1888, p. 20. Where the power is exercisable only with the consent of a person who is a lunatic so found, the consent should be given by his committee under the direction of the Court: *Re Nevill*, 31 Ch. D. 161; *Re Garrod*, *ib.* 164.

(*c*) Under this section, a reduction in the number of trustees of a continuing trust may be effected. If it is desired that the number shall be kept above two, the operation of the section must be wholly or partially

trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Act, without any new trustee being appointed in his place. 56 & 57 Vict. c. 53.

(2.) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(4.) This section applies to trusts created either before or after the commencement of this Act.

Vesting of trust property in new or continuing trustees (*a*).

12.—(1.) Where a deed by which a new trustee is appointed to perform any trust (*b*) contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become and are the trustees for performing the trust, that declaration shall, without any conveyance or

excluded under sub-sect. 3. As to the present practice of the Court as to diminishing the number of trustees, see *Re Gardiner's Trusts*, 33 Ch. D. 590; *Re Leon*, [1892] 1 Ch. 348; *Re Lees' Settlement Trusts*, [1896] 2 Ch. 508. In an action to administer a trust the Court has inherent jurisdiction to discharge a trustee without appointing a new trustee in his place: *Re Chetwynd's Settlement*, [1902] 1 Ch. 692.

(*a*) It may safely be assumed, notwithstanding a doubt arising from the language of the section, that a declaration by the appointor in pursuance of this section will vest the property referred to in the declaration in the persons who in consequence of, and after the execution of the deed, become the trustees for the time being. In acting on the section, special attention must be paid to the exceptions mentioned in sub-sect. 3, and a vesting order as to these is sometimes necessary, owing to the impossibility of obtaining the concurrence of the retiring or discharged trustee: see *Re Harrison's Settlement Trusts*, W. N. 1883, p. 31; *Re Keeley's Trusts*, 53 L. T. 487; *Re Vicat*, 33 Ch. D. 103; *Re Dewhirst's Trusts*, *ib.* 416. It seems clear from the context that "an estate or interest in any land subject to the trust or in any chattel so subject," means any estate or interest subject to the trust whether in land or in chattels. An appointment of new trustees and the vesting of the property are distinct matters within the Stamp Act, 1891, each requiring (it seems) a separate stamp: see *Hadgett* v. *Commrs. of Inland Revenue*, 3 Ex. Div. 46. The duty on a conveyance or transfer made for effectuating the appointment of a new trustee, or the retirement of a trustee without a new one being appointed, is limited to 10*s*. See Stamp Act, 1891, s. 62, amended by the Finance Act, 1902, s. 9; and also the Finance (1909-10) Act, 1910, s. 74 (6).

(*b*) See *London and County Banking Co.* v. *Goddard*, [1897] 1 Ch. 642.

56 & 57 Vict. c. 53.

assignment, operate to vest in those persons, as joint tenants, and for the purposes of the trust, that estate, interest, or right.

(2.) Where a deed by which a retiring trustee is discharged under this Act contains such a declaration as is in this section mentioned by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates.

(3.) This section does not extend to any legal estate or interest in copyhold or customary land, or to land conveyed by way of mortgage for securing money subject to the trust, or to any such share, stock, annuity, or property as is only transferable in books kept by a company or other body, or in manner directed by or under Act of Parliament.

(4.) For purposes of registration of the deed in any registry, the person or persons making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.

(5.) This section applies only to deeds executed after the thirty-first of December one thousand eight hundred and eighty-one.

Purchase and Sale.

Power of trustee for sale to sell by auction, &c. (*a*).

13.—(1.) Where a trust for sale or a power of sale of property is vested in a trustee, he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to resell, without being answerable for any loss.

(2.) This section applies only if and as far as a contrary intention is not expressed in the instrument creating the trust or power, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(3.) This section applies only to a trust or power created by an instrument coming into operation after the thirty-first of December one thousand eight hundred and eighty-one.

(*a*) This section is a re-enactment of sect. 35 (repealed) of the Conveyancing Act, 1881.

56 & 57 Vict. c. 53.

Power to sell subject to depreciatory conditions (*a*).

14.—(1.) No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.

(2.) No sale made by a trustee shall, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.

(3.) No purchaser, upon any sale made by a trustee, shall be at liberty to make any objection against the title upon the ground aforesaid.

(4.) This section applies only to sales made after the twenty-fourth day of December one thousand eight hundred and eighty-eight.

Power to sell under 37 & 38 Vict. c. 78 (*b*).

15. A trustee who is either a vendor or a purchaser may sell or buy without excluding the application of section two of the Vendor and Purchaser Act, 1874.

Married woman as bare trustee may convey (*b*).

16. When any freehold or copyhold hereditament is vested in a married woman as a bare trustee she may convey or surrender it as if she were a feme sole.

Various Powers and Liabilities.

Power to authorise receipt of money by banker or solicitor (*c*).

17.—(1.) A trustee may appoint a solicitor to be his agent to receive and give a discharge for any money or valuable considera-

(*a*) This section re-enacts sect. 3 (repealed) of the Trustee Act, 1888. For the previous state of the law, see *Dance* v. *Goldingham*, 8 Ch. App. 902; *Dunn* v. *Flood*, 25 Ch. D. 629; 28 Ch. D. 586.

(*b*) Sects. 15 and 16 are a re-enactment of sects. 3 and 6 of the V. & P. Act, 1874 (App. II., *supra*), repealed by this Act. As to the words "bare trustee," see *Re Docwra*, 29 Ch. D. 693; and *Re Cunningham and Frayling*, [1891] 2 Ch. 567. By virtue of sect. 16, a married woman trustee might convey without the concurrence of her husband, and a separate acknowledgment when the trusts were at an end, although during their continuance she could not formerly do so, according to the decision in *Re Harkness and Allsopp's Contract*, [1896] 2 Ch. 358, now overruled by the M. W. P. Act, 1907 (App. XIV., *supra*), s. 1; and see note (*a*) at p. 58, *supra*.

(*c*) This section replaces sect. 2 (repealed) of the Trustee Act, 1888, which extended the operation of sect. 56 of the Conv. Act, 1881 (App. IV., *supra*), to the case of a trustee: see *Re Hetling and Merton's Contract*, [1893] 3 Ch. 269. The solicitor to receive the money must be appointed by the trustee himself; see the case cited, where the solicitor had been appointed by the donee of a power of attorney from the trustee.

56 & 57 Vict. c. 53.

44 & 45 Vict. c. 41.

tion or property receivable by the trustee under the trust, by permitting the solicitor to have the custody of, and to produce, a deed containing any such receipt as is referred to in section fifty-six of the Conveyancing and Law of Property Act, 1881; and a trustee shall not be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment; and the producing of any such deed by the solicitor shall have the same validity and effect under the said section as if the person appointing the solicitor had not been a trustee.

(2.) A trustee may appoint a banker or solicitor to be his agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of assurance, by permitting the banker or solicitor to have the custody of and to produce the policy of assurance with a receipt signed by the trustee, and a trustee shall not be chargeable with a breach of trust by reason only of his having made or concurred in making any such appointment.

(3.) Nothing in this section shall exempt a trustee from any liability which he would have incurred if this Act had not been passed, in case he permits any such money, valuable consideration, or property to remain in the hands or under the control of the banker or solicitor for a period longer than is reasonably necessary to enable the banker or solicitor (as the case may be) to pay or transfer the same to the trustee.

(4.) This section applies only where the money or valuable consideration or property is received after the twenty-fourth day of December one thousand eight hundred and eighty-eight.

(5.) Nothing in this section shall authorise a trustee to do anything which he is in express terms forbidden to do, or to omit anything which he is in express terms directed to do, by the instrument creating the trust.

Power to insure building (*a*).

18.—(1.) A trustee may insure against loss or damage by fire any building or other insurable property to any amount (including the amount of any insurance already on foot) not exceeding three equal fourth parts of the full value of such building or property, and pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trusts, without

(*a*) This is a re-enactment of sect. 7 (repealed) of the Trustee Act, 1888. As to the position of executors and trustees with respect to insurance of trust property before the passing of the Trustee Act, 1888, see *Bailey* v. *Gould*, 4 Y. & C. 221; *Fry* v. *Fry*, 27 Beav. 146; and *Re Fowler*, 16 Ch. D. 723. Heirlooms were held within the section in *Re Earl of Egmont's Trusts*, [1908] 1 Ch. 821; see also *Re Quicke's Trusts*, *ib.* 887, as to the application as between capital and income of monies received in respect of an insurance.

obtaining the consent of any person who may be entitled wholly or partly to such income. 56 & 57 Vict. c. 53.

(2.) This section does not apply to any building or property which a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so.

(3.) This section applies to trusts created either before or after the commencement of this Act, but nothing in this section shall authorise any trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust.

Power of trustees of renewable leaseholds to renew and raise money for the purpose (*a*).

19.—(1.) A trustee of any leaseholds for lives or years which are renewable from time to time, either under any covenant or contract, or by custom or usual practice, may, if he thinks fit, and shall, if thereto required by any person having any beneficial interest, present or future, or contingent, in the leaseholds, use his best endeavours to obtain from time to time a renewed lease of the same hereditaments on the accustomed and reasonable terms, and for that purpose may from time to time make or concur in making a surrender of the lease for the time being subsisting, and do all such other acts as are requisite: Provided that, where by the terms of the settlement or will the person in possession for his life or other limited interest is entitled to enjoy the same without any obligation to renew or to contribute to the expense of renewal, this section shall not apply unless the consent in writing of that person is obtained to the renewal on the part of the trustee.

(2.) If money is required to pay for the renewal, the trustee effecting the renewal may pay the same out of any money then in his hands in trust for the persons beneficially interested in the lands to be comprised in the renewed lease, and if he has not in his hands sufficient money for the purpose, he may raise the money required by mortgage of the hereditaments to be comprised in the renewed lease, or of any other hereditaments for the time being subject to the uses or trusts to which those hereditaments are subject, and no person advancing money upon a mortgage purporting to be under this power shall be bound to see that the money is wanted, or that no more is raised than is wanted for the purpose.

(3.) This section applies to trusts created either before or after the commencement of this Act, but nothing in this section shall

(*a*) This section is a re-enactment with slight alterations of sect. 8 and part of sect. 9 of 23 & 24 Vict. c. 145, which sections were repealed by the S. L. Act, 1882, s. 64, and also of the repealed sects. 10 and 11 of the Trustee Act, 1888.

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authorise any trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust.

Power of trustee to give receipts (*a*).

20.—(1.) The receipt in writing of any trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to him under any trust or power shall be a sufficient discharge for the same, and shall effectually exonerate the person paying, transferring, or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof.

(2.) This section applies to trusts created either before or after the commencement of this Act.

Power for executors and trustees to compound, &c. (*b*).

21.—(1.) An executor or administrator may pay or allow any debt or claim on any evidence that he thinks sufficient.

(2.) An executor or administrator, or two or more trustees, acting together, or a sole acting trustee where by the instrument, if any, creating the trust a sole trustee is authorised to execute the trusts and powers thereof, may, if and as he or they may think fit, accept any composition or any security, real or personal, for any debt or for any property, real or personal, claimed, and may allow any time for payment for any debt, and may compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's or intestate's estate or to the trust, and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument, and to the provisions therein contained.

(*a*) Sect. 20 replaces sect. 36 (repealed) of the Conv. Act, 1881. Sect. 23 of 22 & 23 Vict. c. 35 is apparently still unrepealed, though superseded as to trustees by this section, as by the repealed section of the Conv. Act, 1881. The section, like the replaced section of the Conv. Act, extends to securities and personal property generally, and renders express trustees' receipt clauses unnecessary.

(*b*) This section replaces sect. 37 (repealed) of the Conv. Act, 1881, which, however, did not extend to administrators: and see *West of England and South Wales District Bank* v. *Murch*, 23 Ch. D. 138; *Abdallah* v. *Rickards*, 32 Sol. Jo. 525; and *Re Brogden*, 38 Ch. D. 546. An executor can compromise a claim of his co-executor: *Re Houghton*, [1904] 1 Ch. 622.

(4.) This section applies to executorships, administratorships and trusts constituted or created either before or after the commencement of this Act. 56 & 57 Vict. c. 53.

Powers of two or more trustees (*a*).

22.—(1.) Where a power or trust is given to or vested in two or more trustees jointly, then, unless the contrary is expressed in the instrument, if any, creating the power or trust, the same may be exercised or performed by the survivor or survivors of them for the time being.

(2.) This section applies only to trusts constituted after or created by instruments coming into operation after the thirty-first day of December one thousand eight hundred and eighty-one.

Exoneration of trustees in respect of certain powers of attorney.

23. A trustee acting or paying money in good faith under or in pursuance of any power of attorney shall not be liable for any such act or payment by reason of the fact that at the time of the payment or act the person who gave the power of attorney was dead or had done some act to avoid the power, if this fact was not known to the trustee at the time of his so acting or paying.

Provided that nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made, and that the person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the trustee.

Implied indemnity of trustees.

24. A trustee shall, without prejudice to the provisions of the instrument, if any, creating the trust, be chargeable only for money and securities actually received by him notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects, or defaults, and not for those of any other trustee, nor for any banker, broker, or other person with whom any trust moneys or securities may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his own wilful default; and may reimburse himself, or pay or discharge out of the trust premises, all expenses incurred in or about the execution of his trusts or powers.

(*a*) In this section, which re-enacts sect. 38 (repealed) of the Conv. Act, 1881, "trustees" includes executors. See sect. 50, *infra*. But it should be noticed that the power or trust is not made exerciseable by the personal representatives of the survivor of two or more trustees. As to the distinction between powers personal and annexed to the office, see *Re Smith*, [1904] 1 Ch. 139; *Re Bacon*, [1907] 1 Ch. 475.

56 & 57 Vict. c. 53.

PART III.

Powers of the Court.

Appointment of New Trustees and Vesting Orders.

Power of the Court to appoint new trustees.

25.—(1.) The High Court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult, or impracticable so to do without the assistance of the Court, make an order for the appointment of a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee. In particular and without prejudice to the generality of the foregoing provision, the Court may make an order for the appointment of a new trustee in substitution for a trustee who is convicted of felony, or is a bankrupt.

(2.) An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

(3.) Nothing in this section shall give power to appoint an executor or administrator.

Vesting orders as to land.

26. In any of the following cases, namely:—

(i.) Where the High Court appoints or has appointed a new trustee; and

(ii.) Where a trustee entitled to or possessed of any land, or entitled to a contingent right therein, either solely or jointly with any other person,—

(*a*) is an infant, or

(*b*) is out of the jurisdiction of the High Court, or

(*c*) cannot be found; and

(iii.) Where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any land; and

(iv.) Where, as to the last trustee known to have been entitled to or possessed of any land, it is uncertain whether he is living or dead; and

(v.) Where there is no heir or personal representative to a trustee who was entitled to or possessed of land and has died intestate as to that land, or where it is uncertain who is the heir or personal representative or devisee of a trustee who was entitled to or possessed of land and is dead; and

(vi.) Where a trustee jointly or solely entitled to or possessed of any land, or entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the land or release of the right, to convey the land or to release the right, and has wilfully refused or neglected to convey the land or release the right for twenty-eight days after the date of the requirement; 56 & 57 Vict. c. 53.

the High Court may make an order (in this Act called a vesting order) vesting the land in any such person in any such manner and for any such estate as the Court may direct, or releasing or disposing of the contingent right to such person as the Court may direct.

Provided that—

(*a*) Where the order is consequential on the appointment of a new trustee the land shall be vested for such estate as the Court may direct in the persons who on the appointment are the trustees; and

(*b*) Where the order relates to a trustee entitled jointly with another person, and such trustee is out of the jurisdiction of the High Court or cannot be found, the land or right shall be vested in such other person, either alone or with some other person.

Orders as to contingent rights of unborn persons.

27. Where any land is subject to a contingent right in an unborn person or class of unborn persons who, on coming into existence, would, in respect thereof, become entitled to or possessed of the land on any trust, the High Court may make an order releasing the land from the contingent right, or may make an order vesting in any person the estate to or of which the unborn person or class of unborn persons would, on coming into existence, be entitled or possessed in the land.

Vesting order in place of conveyance by infant mortgagee.

28. Where any person entitled to or possessed of land or entitled to a contingent right in land, by way of security for money, is an infant, the High Court may make an order vesting or releasing or disposing of the land or right in like manner as in the case of an infant trustee.

Vesting order in place of conveyance by heir, or devisee of heir, &c., or personal representative of mortgagee.

29. Where a mortgagee of land has died without having entered into the possession or into the receipt of the rents and profits thereof, and the money due in respect of the mortgage has been paid to a person entitled to receive the same, or that last-mentioned person consents to any order for the reconveyance of the land, then the High Court may make an order vesting the land in such person

56 & 57 Vict. c. 53.

or persons in such manner and for such estate as the Court may direct in any of the following cases, namely,—

(*a*) Where an heir or personal representative or devisee of the mortgagee is out of the jurisdiction of the High Court or cannot be found; and

(*b*) Where an heir or personal representative or devisee of the mortgagee on demand made by or on behalf of a person entitled to require a conveyance of the land has stated in writing that he will not convey the same or does not convey the same for the space of twenty-eight days next after a proper deed for conveying the land has been tendered to him by or on behalf of the person so entitled; and

(*c*) Where it is uncertain which of several devisees of the mortgagee was the survivor; and

(*d*) Where it is uncertain as to the survivor of several devisees of the mortgagee or as to the heir or personal representative of the mortgagee whether he is living or dead; and

(*e*) Where there is no heir or personal representative to a mortgagee who has died intestate as to the land, or where the mortgagee has died and it is uncertain who is his heir or personal representative or devisee.

Vesting order consequential on judgment for sale or mortgage of land.

30. Where any court gives a judgment or makes an order directing the sale or mortgage of any land, every person who is entitled to or possessed of the land, or entitled to a contingent right therein *as heir, or under the will of a deceased person for payment of whose debts the judgment was given or order made* (*a*), and is a party to the action or proceeding in which the judgment or order is given or made or is otherwise bound by the judgment or order, shall be deemed to be so entitled or possessed, as the case may be, as a trustee within the meaning of this Act; and the High Court may, if it thinks expedient, make an order vesting the land or any part thereof for such estate as that Court thinks fit in the purchaser or mortgagee or in any other person.

Vesting order consequential on judgment for specific performance, &c.

31. Where a judgment is given for the specific performance of a contract concerning any land, or for the partition, or sale in lieu of partition, or exchange, of any land, or generally where any judgment is given for the conveyance of any land either in cases arising out of the doctrine of election or otherwise, the High Court may declare that any of the parties to the action are trustees of the land or any part thereof within the meaning of this Act, or may declare that the interests of unborn persons who might claim under any party to

(*a*) The words in *italics* have been repealed by the Trustee Act (1893) Amendment Act, 1894 (App. XVII., *infra*), s. 1.

the action, or under the will or voluntary settlement of any person deceased who was during his lifetime a party to the contract or transactions concerning which the judgment is given, are the interests of persons who, on coming into existence, would be trustees within the meaning of this Act, and thereupon the High Court may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees. 56 & 57 Vict. c. 53.

Effect of vesting order.

32. A vesting order under any of the foregoing provisions shall, in the case of a vesting order consequential on the appointment of a new trustee, have the same effect as if the persons who before the appointment were the trustees (if any) had duly executed all proper conveyances of the land for such estate as the High Court directs, or if there is no such person, or no such person of full capacity, then as if such person had existed, and been of full capacity and had duly executed all proper conveyances of the land for such estate as the Court directs, and shall in every other case have the same effect as if the trustee or other person or description or class of persons to whose rights or supposed rights the said provisions respectively relate had been an ascertained and existing person of full capacity, and had executed a conveyance or release to the effect intended by the order.

Power to appoint person to convey.

33. In all cases where a vesting order can be made under any of the foregoing provisions, the High Court may, if it is more convenient, appoint a person to convey the land or release the contingent right, and a conveyance or release by that person in conformity with the order shall have the same effect as an order under the appropriate provision.

Effect of vesting order as to copyhold.

34.—(1.) Where an order vesting copyhold land in any person is made under this Act with the consent of the lord or lady of the manor, the land shall vest accordingly without surrender or admittance.

(2.) Where an order is made under this Act appointing any person to convey any copyhold land, that person shall execute and do all assurances and things for completing the assurance of the land; and the lord and lady of the manor and every other person shall, subject to the customs of the manor and the usual payments, be bound to make admittance to the land and to do all other acts for completing the assurance thereof, as if the persons in whose place an appointment is made were free from disability and had executed and done those assurances and things.

Vesting orders as to stock and choses in action.

35.—(1.) In any of the following cases, namely:—

(i.) Where the High Court appoints or has appointed a new trustee; and

56 & 57 Vict. c. 53.

(ii.) Where a trustee entitled alone or jointly with another person to stock or to a chose in action—

(*a*) is an infant, or

(*b*) is out of the jurisdiction of the High Court, or

(*c*) cannot be found; or

(*d*) neglects or refuses to transfer stock, or receive the dividends or income thereof, or to sue for or recover a chose in action, according to the direction of the person absolutely entitled thereto for twenty-eight days next after a request in writing has been made to him by the person so entitled, or

(*e*) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a chose in action for twenty-eight days next after an order of the High Court for that purpose has been served on him; or

(iii.) Where it is uncertain whether a trustee entitled alone or jointly with another person to stock or to a chose in action is alive or dead,

the High Court may make an order vesting the right to transfer or call for a transfer of stock, or to receive the dividends or income thereof, or to sue for or recover a chose in action, in any such person as the Court may appoint:

Provided that—

(*a*) Where the order is consequential on the appointment by the Court of a new trustee, the right shall be vested in the persons who, on the appointment, are the trustees; and

(*b*) Where the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in that last-mentioned person either alone or jointly with any other person whom the Court may appoint.

(2.) In all cases where a vesting order can be made under this section, the Court may, if it is more convenient, appoint some proper person to make or join in making the transfer.

(3.) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the Court under this Act, may transfer the stock to himself or any other person, according to the order, and the Banks of England and Ireland and all other companies shall obey every order under this section according to its tenor.

(4.) After notice in writing of an order under this section it shall not be lawful for the Bank of England or of Ireland or any other

company to transfer any stock to which the order relates or to pay any dividends thereon except in accordance with the order. 56 & 57 Vict. c. 53.

(5.) The High Court may make declarations and give directions concerning the manner in which the right to any stock or chose in action vested under the provisions of this Act is to be exercised.

(6.) The provisions of this Act as to vesting orders shall apply to shares in ships registered under the Acts relating to merchant shipping as if they were stock.

Persons entitled to apply for orders.

36.—(1.) An order under this Act for the appointment of a new trustee or concerning any land, stock, or chose in action subject to a trust, may be made on the application of any person beneficially interested in the land, stock, or chose in action, whether under disability or not, or on the application of any person duly appointed trustee thereof.

(2.) An order under this Act concerning any land, stock, or chose in action subject to a mortgage may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgage.

Powers of new trustee appointed by Court.

37. Every trustee appointed by a Court of competent jurisdiction shall, as well before as after the trust property becomes by law, or by assurance, or otherwise, vested in him, have the same powers, authorities, and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument, if any, creating the trust.

Power to charge costs on trust estate.

38. The High Court may order the costs and expenses of and incident to any application for an order appointing a new trustee, or for a vesting order, or of and incident to any such order, or any conveyance or transfer in pursuance thereof, to be paid or raised out of the land or personal estate in respect whereof the same is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as to the Court may seem just.

Trustees of charities.

39. The powers conferred by this Act as to vesting orders may be exercised for vesting any land, stock, or chose in action in any trustee of a charity or society over which the High Court would have jurisdiction upon action duly instituted, whether the appointment of the trustee was made by instrument under a power or by the High Court under its general or statutory jurisdiction.

Orders made upon certain allegations to be conclusive evidence.

40. Where a vesting order is made as to any land under this Act or under the Lunacy Act, 1890, or under any Act relating to lunacy in Ireland, founded on an allegation of the personal incapacity of a trustee or mortgagee, or on an allegation that a trustee or the heir or personal representative or devisee of a mortgagee is out of the 53 & 54 Vict. c. 5.

56 & 57 Vict. c. 53.

jurisdiction of the High Court or cannot be found, or that it is uncertain which of several trustees or which of several devisees of a mortgagee was the survivor, or whether the last trustee or the heir or personal representative or last surviving devisee of a mortgagee is living or dead, or on an allegation that any trustee or mortgagee has died intestate without an heir or has died and it is not known who is his heir or personal representative or devisee, the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any court upon any question as to the validity of the order; but this section shall not prevent the High Court from directing a reconveyance or the payment of costs occasioned by any such order if improperly obtained.

Application of vesting order to land out of England.

41. The powers of the High Court in England to make vesting orders under this Act shall extend to all land and personal estate in Her Majesty's dominions, except Scotland (*a*).

Payment into Court by Trustees.

Payment into Court by trustees (*b*).

42.—(1.) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may pay the same into the High Court; and the same shall, subject to rules of court, be dealt with according to the orders of the High Court.

(2.) The receipt or certificate of the proper officer shall be a sufficient discharge to trustees for the money or securities so paid into Court.

(3.) Where any moneys or securities are vested in any persons as trustees, and the majority are desirous of paying the same into Court, but the concurrence of the other or others cannot be obtained, the High Court may order the payment into Court to be made by the majority without the concurrence of the other or others; and where any such moneys or securities are deposited with any banker, broker, or other depositary, the Court may order payment or delivery of the moneys or securities to the majority of the trustees for the purpose of payment into Court, and every transfer, payment and delivery made in pursuance of any such order shall be valid and take effect as if the same had been made

(*a*) Extended to Ireland by the Trustee Act (1893) Amendment Act, 1894 (App. XVII., *infra*), s. 2.

(*b*) Life Assurance Companies are now, by the Life Assurance Companies (Payment into Court) Act, 1896, empowered to pay into Court monies payable by them under a life-policy in respect of which, in the opinion of their directors, no sufficient discharge can otherwise be obtained.

on the authority or by the act of all the persons entitled to the moneys and securities so transferred, paid, or delivered. 56 & 57 Vict. c. 53.

Miscellaneous.

Power to give judgment in absence of a trustee.

43. Where in any action the High Court is satisfied that diligent search has been made for any person who, in the character of trustee, is made a defendant in any action, to serve him with a process of the Court, and that he cannot be found, the Court may hear and determine the action and give judgment therein against that person in his character of a trustee, as if he had been duly served, or had entered an appearance in the action, and had also appeared by his counsel and solicitor at the hearing, but without prejudice to any interest he may have in the matters in question in the action in any other character.

Power to sanction sale of land or minerals separately (*a*).

44.—(1.) Where a trustee is for the time being authorised to dispose of land by way of sale, exchange, partition, or enfranchisement, the High Court may sanction his so disposing of the land with an exception or reservation of any minerals, and with or without rights and powers of or incidental to the working, getting, or carrying away of the minerals, or so disposing of the minerals, with or without the said rights or powers, separately from the residue of the land.

(2.) Any such trustee, with the said sanction previously obtained, may, unless forbidden by the instrument creating the trust or direction, from time to time, without any further application to the Court, so dispose of any such land or minerals.

(3.) Nothing in this section shall derogate from any power which a trustee may have under the Settled Land Acts, 1882 to 1890, or otherwise.

Power to make beneficiary indemnify for breach of trust (*b*).

45.—(1.) Where a trustee commits a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the High Court may, if it thinks fit, and notwithstanding that the beneficiary may be a married woman entitled for her separate use and restrained from anticipation, make such order as to the Court

(*a*) This section is a re-enactment, so far as concerns trustees, of sect. 2 of 25 & 26 Vict. c. 108, which Act is entirely repealed by this Act. The second section of the repealed Act extended to mortgagees (see *Re Beaumont's Mortgage Trusts*, 12 Eq. 86), who are apparently excluded from the operation of sect. 44 of this Act: see the definition of "trustee" in sect. 50, *infra*. The section has, however, been amended by the Trustee Act (1893) Amendment Act, 1894 (App. XVII., *infra*), which enacts (sect. 3) that after the word "trustee" in the first two places where it occurs in the section shall be inserted the words "or other person."

(*b*) This section replaces sect. 6 (repealed) of the Trustee Act, 1888. As to its operation and effect, see *Re Somerset*, [1894] 1 Ch. 231; *Bolton*

56 & 57 Vict. c. 53.

seems just, for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or person claiming through him.

(2.) This section shall apply to breaches of trust committed as well before as after the passing of this Act, but shall not apply so as to prejudice any question in an action or other proceeding which was pending on the twenty-fourth day of December one thousand eight hundred and eighty-eight, and is pending at the commencement of this Act.

Jurisdiction of palatine and county courts.

46. The provisions of this Act with respect to the High Court shall, in their application to cases within the jurisdiction of a palatine court or county court, include that court, and the procedure under this Act in palatine courts and county courts shall be in accordance with the Acts and rules regulating the procedure of those courts.

PART IV.

Miscellaneous and Supplemental.

Application to trustees under Settled Land Acts of provisions as to appointment of trustees (*a*).

47.—(1.) All the powers and provisions contained in this Act with reference to the appointment of new trustees, and the discharge and retirement of trustees, are to apply to and include trustees for the purposes of the Settled Land Acts, 1882 to 1890, whether appointed by the Court or by the settlement, or under provisions contained in the settlement.

(2.) This section applies and is to have effect with respect to an appointment or a discharge and retirement of trustees taking place before as well as after the commencement of this Act.

(3.) This section is not to render invalid or prejudice any appointment or any discharge and retirement of trustees effected before the passing of this Act, otherwise than under the provisions of the Conveyancing and Law of Property Act, 1881.

44 & 45 Vict. c. 41.

v. *Currie*, [1895] 1 Ch. 544, where the position of a trustee, knowingly committing a breach of trust with the consent of a beneficiary restrained from anticipation, was considered by Romer, J.; *Chillingworth* v. *Chambers*, [1896] 1 Ch. 685; *Re Holt*, [1897] 2 Ch. 525; *Fletcher* v. *Collis*, [1905] 2 Ch. 24, where a beneficiary of full age and capacity consenting to the breach of trust was held, independently of this section, to be disentitled to relief.

(*a*) This section replaces sect. 17 (repealed by this Act) of the S. L. Act, 1890, which was enacted for the purpose of meeting the case of *Re Wilcock*, 34 Ch. D. 508, in which it was doubted whether sect. 31 of the Conv. Act, 1881 (now replaced by sect. 10 of this Act), applied to trustees appointed for the purposes of the Settled Land Acts.

56 & 57 Vict. c. 53.

Trust estates not affected by trustee becoming a convict.

33 & 34 Vict. c. 23.

48. Property vested in any person on any trust or by way of mortgage shall not, in case of that person becoming a convict within the meaning of the Forfeiture Act, 1870, vest in any such administrator as may be appointed under that Act, but shall remain in the trustee or mortgagee, or survive to his co-trustee or descend to his representative as if he had not become a convict; provided that this enactment shall not affect the title to the property so far as relates to any beneficial interest therein of any such trustee or mortgagee.

Indemnity.

49. This Act, and every order purporting to be made under this Act, shall be a complete indemnity to the Banks of England and Ireland, and to all persons for any acts done pursuant thereto; and it shall not be necessary for the Bank or for any person to inquire concerning the propriety of the order, or whether the Court by which it was made had jurisdiction to make the same.

Definitions.

50. In this Act, unless the context otherwise requires,—

The expression "bankrupt" includes, in Ireland, insolvent:

The expression "contingent right," as applied to land, includes a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of the interest, or possibility is or is not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent:

The expressions "convey" and "conveyance" applied to any person include the execution by that person of every necessary or suitable assurance for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of land whereof he is seised or possessed, or wherein he is entitled to a contingent right, either for his whole estate or for any less estate, together with the performance of all formalities required by law to the validity of the conveyance, including the acts to be performed by married women and tenants in tail in accordance with the provisions of the Acts for the abolition of fines and recoveries in England and Ireland respectively (*a*), and also including surrenders and other acts which a tenant of customary or copyhold lands can himself perform preparatory to or in aid of a complete assurance of the customary or copyhold land:

The expression "devisee" includes the heir of a devisee and the devisee of an heir, and any person who may claim right by devolution of title of a similar description:

(*a*) An order made under this Act vesting or appointing a person to convey the estate of an infant tenant in tail in possession operates to bar the estate tail and remainders over: *Re Montagu*, [1896] 1 Ch. 549.

56 & 57 Vict. c. 53.

The expression "instrument" includes Act of Parliament:

The expression "land" includes manors and lordships, and reputed manors and lordships, and incorporeal as well as corporeal hereditaments, and any interest therein, and also an undivided share of land:

The expressions "mortgage" and "mortgagee" include and relate to every estate and interest regarded in equity as merely a security for money, and every person deriving title under the original mortgagee:

The expressions "pay" and "payment" as applied in relation to stocks and securities, and in connexion with the expression "into Court" include the deposit or transfer of the same in or into Court:

The expression "possessed" applies to receipt of income of, and to any vested estate less than a life estate, legal or equitable, in possession or in expectancy, in, any land:

The expression "property" includes real and personal property, and any estate and interest in any property, real or personal, and any debt, and any thing in action, and any other right or interest, whether in possession or not:

The expression "rights" includes estates and interests:

The expression "securities" includes stocks, funds, and shares; and so far as relates to payments into Court has the same meaning as in the Court of Chancery (Funds) Act, 1872:

35 & 36 Vict. c. 44.

The expression "stock" includes fully paid-up shares; and, so far as relates to vesting orders made by the Court under this Act, includes any fund, annuity, or security transferable in books kept by any company or society, or by instrument of transfer either alone or accompanied by other formalities, and any share or interest therein:

The expression "transfer," in relation to stock, includes the performance and execution of every deed, power of attorney, act, and thing on the part of the transferor to effect and complete the title in the transferee:

The expression "trust" does not include the duties incident to an estate conveyed by way of mortgage; but with this exception the expressions "trust" and "trustee" include implied and constructive trusts, and cases where the trustee has a beneficial interest in the trust property, and the duties incident to the office of personal representative of a deceased person (*a*).

(*a*) In *Re Moore*, 21 Ch. D. 778, Kay, J., appointed a trustee to perform the duties of an executor. But see *Re Willey*, W. N. 1890, p. 1: *Eaton*

51. *The Acts mentioned in the schedule to this Act are hereby repealed except as to Scotland to the extent mentioned in the third column of that schedule* (*a*). 56 & 57 Vict. c. 53. Repeal.

52. This Act does not extend to Scotland. Extent of Act.

53. This Act may be cited as the Trustee Act, 1893. Short title.

54. *This Act shall come into operation on the first day of January one thousand eight hundred and ninety-four* (*a*). Commencement.

SCHEDULE (*b*). Section 51.

Session and Chapter.	*Title or Short Title.*	*Extent of Repeal.*
36 *Geo.* 3, *c.* 52	*The Legacy Duty Act*, 1796 .	*Section thirty-two.*
9 & 10 *Vict. c.* 101..	*The Public Money Drainage Act*, 1846.	*Section thirty-seven.*
10 & 11 *Vict. c.* 32..	*The Landed Property Improvement* (*Ireland*) *Act*, 1847.	*Section fifty-three.*
10 & 11 *Vict. c.* 96..	*An Act for better securing trust funds, and for the relief of trustees.*	*The whole Act.*
11 & 12 *Vict. c.* 68..	*An Act for extending to Ireland an Act passed in the last session of Parliament, entitled "An Act for "better securing trust funds, "and for the relief of trus- "tees."*	*The whole Act.*
12 & 13 *Vict. c.* 74..	*An Act for the further relief of trustees.*	*The whole Act.*

v. *Daines*, W. N. 1894, p. 32. Under the Judicial Trustees Act, 1896, the Court has power to appoint a judicial trustee to perform the duties of an executor or administrator.

(*a*) Repealed by the Statute Law Revision Act, 1908.

(*b*) This schedule has been repealed by the Statute Law Revision Act, 1908.

56 & 57 Vict. c. 53.	Session and Chapter.	Title or Short Title.	Extent of Repeal.
	13 & 14 *Vict. c.* 60..	*The Trustee Act*, 1850.....	*Sections seven to nineteen, twenty-two to twenty-five, twenty-nine, thirty-two to thirty-six, forty-six, forty-seven, forty-nine, fifty-four and fifty-five; also the residue of the Act except so far as relates to the Court exercising jurisdiction in lunacy in Ireland.*
	15 & 16 *Vict. c.* 55..	*The Trustee Act*, 1852.....	*Sections one to five, eight, and nine; also the residue of the Act except so far as relates to the Court exercising jurisdiction in lunacy in Ireland.*
	17 & 18 *Vict. c.* 82..	*The Court of Chancery of Lancaster Act*, 1854.	*Section eleven.*
	18 & 19 *Vict. c.* 91..	*The Merchant Shipping Act Amendment Act*, 1855.	*Section ten, except so far as relates to the Court exercising jurisdiction in lunacy in Ireland.*
	20 & 21 *Vict. c.* 60..	*The Irish Bankrupt and Insolvent Act*, 1857.	*Section three hundred and twenty-two.*
	22 & 23 *Vict. c.* 35..	*The Law of Property Amendment Act*, 1859.	*Sections twenty-six, thirty and thirty-one.*
	23 & 24 *Vict. c.* 38..	*The Law of Property Amendment Act*, 1860.	*Section nine.*
	25 & 26 *Vict. c.* 108.	*An Act to confirm certain sales, exchanges, partitions, and enfranchisements by trustees and others.*	*The whole Act.*
	26 & 27 *Vict. c.* 73..	*An Act to give further facilities to the holders of Indian Stock.*	*Section four.*

Session and Chapter.	*Title or Short Title.*	*Extent of Repeal.*
27 & 28 *Vict. c.* 114.	*The Improvement of Land Act*, 1864.	*Section sixty so far as it relates to trustees; and section sixty-one.*
28 & 29 *Vict. c.* 78.	*The Mortgage Debenture Act*, 1865.	*Section forty.*
31 & 32 *Vict. c.* 40.	*The Partition Act*, 1868....	*Section seven.*
33 & 34 *Vict. c.* 71.	*The National Debt Act*, 1870.	*Section twenty-nine.*
34 & 35 *Vict. c.* 27.	*The Debenture Stock Act*, 1871.	*The whole Act.*
37 & 38 *Vict. c.* 78.	*The Vendor and Purchaser Act*, 1874.	*Sections three and six.*
38 & 39 *Vict. c.* 83.	*The Local Loans Act*, 1875 ..	*Sections twenty-one and twenty-seven.*
40 & 41 *Vict. c.* 59.	*The Colonial Stock Act*, 1877.	*Section twelve.*
43 & 44 *Vict. c.* 8 ..	*The Isle of Man Loans Act*, 1880.	*Section seven, so far as it relates to trustees.*
44 & 45 *Vict. c.* 41.	*The Conveyancing and Law of Property Act*, 1881.	*Sections thirty-one to thirty-eight.*
45 & 46 *Vict. c.* 39.	*The Conveyancing Act*, 1882.	*Section five.*
46 & 47 *Vict. c* 52.	*The Bankruptcy Act*, 1883 ..	*Section one hundred and forty-seven.*
51 & 52 *Vict. c.* 59.	*The Trustee Act*, 1888	*The whole Act, except sections one and eight.*
52 & 53 *Vict. c.* 32.	*The Trust Investment Act*, 1889.	*The whole Act, except sections one and seven.*
52 & 53 *Vict. c.* 47.	*The Palatine Court of Durham Act*, 1889.	*Section eight.*
53 & 54 *Vict. c.* 5 ..	*The Lunacy Act*, 1890	*Section one hundred and forty.*
53 & 54 *Vict. c.* 69.	*The Settled Land Act*, 1890 ..	*Section seventeen.*
55 & 56 *Vict. c.* 13.	*The Conveyancing and Law of Property Act*, 1892.	*Section six.*

APPENDIX XVII.

57 Vict. c. 10.

57 VICT. Cap. 10.

AN ACT TO AMEND THE TRUSTEE ACT, 1893.

[18*th June*, 1894.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Amendment of 56 & 57 Vict. c. 53, s. 30.

1. In section thirty of the Trustee Act, 1893, the words "as heir, or under the will of a deceased person, for payment of whose debts the judgment was given or order made" shall be repealed.

Extension to Ireland of 56 & 57 Vict. c. 53, s. 41.

2. The powers conferred on the High Court in England by section forty-one of the Trustee Act, 1893, to make vesting orders as to all land and personal estate in Her Majesty's dominions except Scotland, are hereby also given to and may be exercised by the High Court in Ireland.

Amendment of 56 & 57 Vict. c. 53, s. 44.

3. In section forty-four of the Trustee Act, 1893, after the word "trustee" in the first two places where it occurs shall be inserted the words "or other person."

Liability of trustee in case of change of character of investment.

4. A trustee shall not be liable for breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorised by the instrument of trust or by the general law (*a*).

Short title.

5. This Act may be cited as the Trustee Act, 1893, Amendment Act, 1894.

(*a*) See in connection with this section, *Re Chapman*, [1896] 2 Ch. 763, where the duties of executors and trustees, with respect to calling in mortgage debts existing at the testator's death, are considered; and see also *Jackson* v. *Dickinson*, [1903] 1 Ch. 947; *Shaw* v. *Cates*, [1909] 1 Ch. 389, and *supra*, p. 930, note (*a*).

APPENDIX XVIII.

60 & 61 VICT. CAP. 65.

60 & 61 VICT. c. 65.

AN ACT TO ESTABLISH A REAL REPRESENTATIVE, AND TO AMEND THE LAND TRANSFER ACT, 1875.

[*6th August*, 1897.]

WHEREAS it is expedient to establish a real representative, and to amend the Land Transfer Act, 1875, in this Act referred to as "the principal Act:" 38 & 39 Vict. c. 87.

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I.

Establishment of a Real Representative.

Devolution of legal interest in real estate on death (*a*).

1.—(1.) Where real estate is vested in any person without a right in any other person to take by survivorship it shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative (*b*) from time to time as if it were a chattel real vesting in them or him.

(2.) This section shall apply to any real estate over which a person executes by will a general power of appointment, as if it were real estate vested in him.

(3.) Probate and letters of administration may be granted in respect of real estate only, although there is no personal estate.

(*a*) See *supra*, pp. 24, 175, note (*c*), 590, note (*c*). The expression "real estate" is not defined, but "land" includes all hereditaments corporeal and incorporeal; see the interpretation clause, sect. 24. The Act does not bind the Crown (*In the Goods of Hartley*, [1899] P. 40; and see also *In the Goods of John Ball*, W. N. 1902, p. 226).

(*b*) *I.e.*, executor or administrator; sect. 24 (2). Where a testator had appointed special executors of his colonial property, and general executors of his will, it was held in *Re Cohen's Executors and London County Council*, [1902] 1 Ch. 187, that the general executors could make a title to the testator's real estate in England without the concurrence of the special executors.

60 & 61 Vict. c. 65.

(4.) The expression "real estate," in this part of this Act, shall not be deemed to include land of copyhold tenure or customary freehold in any case in which an admission or any act by the lord of the manor is necessary to perfect the title of a purchaser from the customary tenant (*a*).

(5.) This section applies only in cases of death after the commencement of this Act (*b*).

Provisions as to administration (*c*).

2.—(1.) Subject to the powers, rights, duties, and liabilities hereinafter mentioned, the personal representatives of a deceased person shall hold the real estate as trustees for the persons by law beneficially entitled thereto, and those persons shall have the same power of requiring a transfer of real estate as persons beneficially entitled to personal estate have of requiring a transfer of such personal estate.

(2.) All enactments and rules of law relating to the effect of probate or letters of administration as respects chattels real, and as respects the dealing with chattels real before probate or administration, and as respects the payment of costs of administration and other matters in relation to the administration of personal estate, and the powers, rights, duties, and liabilities of personal representatives in respect of personal estate, shall apply to real estate so far as the same are applicable, as if that real estate were a chattel real vesting in them or him, save that it shall not be lawful for some or one only of several joint personal representatives, without the authority of the Court, to sell or transfer real estate.

(3.) In the administration of the assets of a person dying after the commencement of this Act, his real estate shall be administered in the same manner, subject to the same liabilities for debt, costs, and expenses, and with the same incidents, as if it were personal estate (*d*), provided that nothing herein contained shall alter or affect the order in which real and personal assets respectively are now applicable in or towards the payment of funeral and testamentary

(*a*) This sub-section does not exclude from the operation of the Act merely equitable estates or interests in copyholds: *Re Somerville and Turner's Contract*, [1903] 2 Ch. 583.

(*b*) 1st January, 1898.

(*c*) See *supra*, pp. 175, note (*e*), and 319, note (*a*).

(*d*) The settled practice of the Chancery Division as to costs in an administration action of real and personal estate is not affected: *Re Jones*, [1902] 1 Ch. 92; *Re Betts*, [1907] 2 Ch. 149; and see also *Re Vickerstaff*, [1906] 1 Ch. 762; nor is the right of retainer of an executor or administrator extended to real estate: *Re Williams*, [1904] 1 Ch. 52; nor is the doctrine of marshalling affected: *Re Kempster*, [1906] 1 Ch. 446; nor the effect of a charge of debts in extending the period of limitation: *Re Balls*, [1909] 1 Ch. 791.

expenses, debts, or legacies, or the liability of real estate to be charged with the payment of legacies. 60 & 61 Vict. c. 65.

(4.) Where a person dies possessed of real estate, the Court shall, in granting letters of administration, have regard to the rights and interests of persons interested in his real estate, and his heir-at-law, if not one of the next of kin, shall be equally entitled to the grant with the next of kin, and provision shall be made by rules of court for adapting the procedure and practice in the grant of letters of administration to the case of real estate.

Provision for transfer to heir or devisee (*a*).

3.—(1.) At any time after the death of the owner of any land, his personal representatives may assent to any devise contained in his will, or may convey the land to any person entitled thereto as heir, devisee, or otherwise, and may make the assent or conveyance, either subject to a charge for the payment of any money which the personal representatives are liable to pay, or without any such charge; and on such assent or conveyance, subject to a charge for all moneys (if any) which the personal representatives are liable to pay, all liabilities of the personal representatives in respect of the land shall cease, except as to any acts done or contracts entered into by them before such assent or conveyance (*b*).

(2.) At any time after the expiration of one year from the death of the owner of any land, if his personal representatives have failed on the request of the person entitled to the land to convey the land to that person, the Court may, if it thinks fit, on the application of that person, and after notice to the personal representatives, order that the conveyance be made, or, in the case of registered land, that the person so entitled be registered as proprietor of the land, either solely or jointly with the personal representatives.

(3.) Where the personal representatives of a deceased person are registered as proprietors of land on his death, a fee shall not be chargeable on any transfer of the land by them unless the transfer is for valuable consideration.

(4.) The production of an assent in the prescribed form by the personal representatives of a deceased proprietor of registered land shall authorise the registrar to register the person named in the assent as proprietor of the land.

Appropriation of land in satisfaction of legacy or share in estate.

4.—(1.) The personal representatives of a deceased person may, in the absence of any express provision to the contrary contained in the will of such deceased person, with the consent of the person entitled to any legacy given by the deceased person or to a share in

(*a*) See *supra*, p. 177, note (*b*).
(*b*) See *Re Cary and Lott's Contract*, [1901] 2 Ch. 463.

60 & 61 Vict. c. 65.

his residuary estate, or, if the person entitled is a lunatic or an infant, with the consent of his committee, trustee, or guardian, appropriate any part of the residuary estate of the deceased in or towards satisfaction of that legacy or share, and may for that purpose value in accordance with the prescribed provisions the whole or any part of the property of the deceased person in such manner as they think fit. Provided that before any such appropriation is effectual, notice of such intended appropriation shall be given to all persons interested in the residuary estate, any of whom may thereupon within the prescribed time apply to the Court, and such valuation and appropriation shall be conclusive save as otherwise directed by the Court (*a*).

(2.) Where any property is so appropriated a conveyance thereof by the personal representatives to the person to whom it is appropriated shall not, by reason only that the property so conveyed is accepted by the person to whom it is conveyed in or towards the satisfaction of a legacy or a share in residuary estate, be liable to any higher stamp duty than that payable on a transfer of personal property for a like purpose.

(3.) In the case of registered land, the production of the prescribed evidence of an appropriation under this section shall authorise the registrar to register the person to whom the property is appropriated as proprietor of the land.

Liability for duty.

5. Nothing in this part of this Act shall affect any duty payable in respect of real estate or impose on real estate any other duty than is now payable in respect thereof.

(*a*) The sub-section applies to personal as well as real estate; but it does not take away or affect the power of appropriation which existed before the Act, and is illustrated in *Re Richardson*, [1896] 1 Ch. 512, and similar cases: see *Re Beverley*, [1901] 1 Ch. 681, and p. 638, *supra*, n. It is believed that no provisions have yet been prescribed.

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TO

INTRODUCTORY OBSERVATIONS AND NOTES.

[NOTE.—C. A. 1881; C. A. 1882; C. A. 1892 = *The Conveyancing and Law of Property Act*, 1881; *The Conveyancing Act*, 1882; *The Conveyancing and Law of Property Act*, 1892 (44 & 45 Vict. c. 41; 45 & 46 Vict. c. 39; 55 & 56 Vict. c. 13); S. L. A. 1882, 1884, 1887, 1889, 1890 = *The Settled Land Acts*, 1882, 1884, 1887, 1889, 1890 (45 & 46 Vict. c. 38; 47 & 48 Vict. c. 18; 50 & 51 Vict. c. 30; 52 & 53 Vict. c. 36; 53 & 54 Vict. c. 69).]

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